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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~319.~~ 3

JOHN H. CLARK ET AL., CLAIMANTS OF THE STEAMER NEW ORLEANS, HER TACKLE, &c., APPELLANTS,

vs.

JOHN S. WEEKS, JAMES W. FITCH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 11, 1879.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

JOHN S. WEEKS & AL., LIBELLANTS & APP'LL'NTS,
vs.
THE STEAMER NEW ORLEANS, &C., JOHN H. CLARK & AL., CLAIM'NTS & APPELLEES.

JOHN S. WEEKS & AL., LIBELLANTS & APPELLEES,
vs.
THE STEAMER NEW ORLEANS, &C., JOHN H. CLARK & AL., CLAIM'TS & APP'LL'NTS.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 30th day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and second.

[L.S.] GEO. F. BETTS, *Clerk.*

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel of John S. Weeks, James W. Fitch, John Kenniston, Abiel Gove, James Bliss (all of the city of Boston, Massachusetts); Luther A. Roby (of Nashua, New Hampshire), William H. Bickmore, Jesse Hosmer, Isaac Fountain (all of Camden, Maine); John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier (all of St. George, Maine); H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose (all of the city of New York), master and owners of the schooner Allie Bickmore, in their own behalf, and as carriers of the cargo on board thereof, against the steamer New Orleans, her engines, tackle, apparel, and furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellants, before and at the time of the collision hereinafter in the third article mentioned, were the owners of the schooner called the Allie Bickmore, with her tackle, apparel, and furniture.

Second. That on Saturday, the twenty-ninth day of August, in the year 1874, the said schooner Allie Bickmore sailed from the port of Fernandina, Florida, she being then tight, staunch, and strong, properly manned, and provided with all necessary apparel, stores, and provisions, and in every other respect well adapted for her
2 intended voyage, and having on board a cargo of lumber, properly stored and secured, and bound for the port of New York.

Third. That said schooner Allie Bickmore proceeded safely on her voyage until the 6th day of September, 1874; that at a quarter past five on the morning of that day the said schooner was run into by the steamer New Orleans; that prior to and at the time of such collision

the said schooner had all her sail set and was steering northeast by north, with light winds from the east southeast; and had a watch properly stationed on the lookout, and vigilant and attentive, and had her lights properly set and burning brightly, and it was clear weather.

That the said steamer was seen at a distance of three miles, and when within a mile of the said schooner the bell of the latter was rung and her crew shouted to the steamer to keep off; that said steamer paid no attention to such signals, but bore down on the schooner and struck her on the port bow, cutting half into her, and said schooner immediately filled with water, and would have sunk but for her cargo; that such collision occurred entirely through the negligent and unseamanlike management of the master and mariners of the said steamer New Orleans, and without fault on the part of said schooner.

Fourth. That said steamer New Orleans immediately after the collision took the Allie Bickmore in tow and continued with her until the next day, September 7th, at four p. m., when they sighted the steamer America, which towed the Allie Bickmore into Philadelphia, where she now lies undergoing repairs.

Fifth. That the said Allie Bickmore, and the cargo, and the personal effects of master and crew on board of her, by the collision hereinbefore described has been damaged to the amount of forty thousand dollars.

Sixth. That the said steamer New Orleans is now lying in the port of New York and within the jurisdiction of this court.

3 Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamer New Orleans, her engines, tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

EDWARD H. LOUD.

Sworn to before me Sept. 25th, 1874.

GEO. F. BETTS,
U. S. Com.

SCUDDER & CARTER,
Proctors for Libellants.

(Endorsed:) United States district court, southern district of New York. John S. Weeks and others, against The Steamer New Orleans, her engines, tackle, apparel, and furniture. Libel. Scudder & Carter, proctors for libellants, 66 Wall street. Filed September 28, 1874.

District court of the United States for the southern district of New York.

Stipulation for libellants' costs, entered into pursuant to the rules and practice of this court.—Filed the 28th day of Sept., 1874.

Whereas a libel was filed in this court on the twenty-eighth day

4 of September, in the year of our Lord one thousand eight hundred and seventy-four, by John S. Weeks et al., against The Steamer New Orleans, her engines, &c., &c., for the reasons and causes in said libel mentioned, and praying that the said steamer, &c., may be condemned, &c.; and that the said libellants and George A. Black, surety, parties hereto, hereby consenting, and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

JOHN S. WEEKS AND OTHERS,
By EDWARD H. LOUD.
GEO. A. BLACK.

Taken and acknowledged this 28th day of September, 1874, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George A. Black, party to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

GEO. A. BLACK.

Sworn to this 28th day of September, 1874, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded 28th day of September, 1874.

5 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal [SEAL.] of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 28th day of September, in the year of our Lord one thousand eight hundred and seventy-four, by John S. Weeks and others, against The Steamer New Orleans, her engines, &c., &c., collision $40,000, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in said steamer or vessel, her tackle, &c., may be cited in general and special to answer the premises and all proceedings being had, that the said steamer or vessel, her tackle, &c., may for the causes in the said libel mentioned be condemned, and sold to pay the demands of the libellants.

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same and to give due notice

to all persons claiming the same or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the southern district of New York on the 20th day of October next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York,
6 this 28th day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth.

GEO. F. BETTS, *Clerk.*

SCUDDER & CARTER,
Proctors for Libellants.

(Endorsed:) Southern district of New York, United States district court. John S. Weeks and others, vs. The Steamer New Orleans, her tackle, &c. Monition. Returnable October 20, 1874. Scudder & Carter, proctor for libellant. Filed October 20, 1874.

In obedience to the within monition I attached the steamer New Orleans, her engine, &c., &c., therein described, on the 28th day of September, 1874, and the same having been bonded was discharged on the 30th day of September, ult.

Dated October 20, 1874.

OLIVER FISKE,
U. S. Marshal.

At a term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Wednesday, the 30th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the Hon. Samuel Blatchford, district judge.

THE STEAMSHIP NEW ORLEANS, &c., *asm.* JOHN S. WEEKS ET AL.

And now John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, owners of the said steamship New Orleans, &c., intervening for the interest of themselves in the said steamship, &c., appear before the honorable court and make
7 claim to the said steamship, &c., &c., as the same are attached by the marshal under process of this court at the instance of John S. Weeks; and the said above-named owners aver that they were in possession of the said steamship, &c., at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said steamship, &c., and that no other person is the owner thereof. Wherefore they pray to defend accordingly.

JNO. H. CLARK,
For self and Others, Claimants.

Sworn to and subscribed this 30th day of September, A. D. 1874, before me.

GEO. F. BETTS,
U. S. Commissioner.

MAN & PARSONS,
Proctors for Claimants.

(Endorsed:) United States district court for the southern district of New York. The Steamship New Orleans, &c., asm. John S. Weeks. Man & Parsons, proctors for claimants, 56 Wall street, N. Y. Filed the 30th day of September, 1874.

District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 30th day of Sept., 1874.

Whereas a libel was filed in this court on the 28th day of September, in the year of our Lord one thousand eight hundred and seventy-four by John S. Weeks and others, against The Steamer New Orleans, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer, &c., may be condemned, &c.; and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands. And whereas, also, a claim has been filed in said cause by John H. Clark and others, now therefore it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be and each of them hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or upon an appeal by the appellate court.

8

JNO. H. CLARK,
For self and other Owners.
JNO. H. CLARK.
SAM'L H. SEAMAN.

Taken and acknowledged this 30th day of September, 1874, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John H. Clark and Samuel H. Seaman, parties to the above stipulation, being duly sworn, doth each depose and say: said Clark that he resides in the southern, and said Seaman in the eastern district of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JNO. H. CLARK.
SAM'L H. SEAMAN.

Sworn to this 30th day of September, 1874, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 30th day of September, 1874.

District court of the United States for the southern district of New York.

Stipulation for value entered into, pursuant to the rules and practice of this court.—Filed the 30th day September, 1874.

Whereas a libel was filed on the twenty-eighth day of September,
9 in the year of our Lord one thousand eight hundred and seventy-four, by John S. Weeks et al. against The Steamer New Orleans, her engines, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamer, her tackle, &c., is in the custody of the marshal under the process issued in pursuance of the prayer of said libel; and whereas it has been consented by the proctors for libellants that on the claimants filing due claim and executing stipulations for costs and value the latter in the sum of forty thousand dollars ($40,000), the said vessel be released from custody and delivered to them as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants of said steamer or their sureties execution for the above amount may issue against their goods, chattels, and lands.

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Man & Parsons, esq's, proctors for the claimants of said steamer, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

JNO. H. CLARK,
For self and other Owners.
JNO. H. CLARK.
SAM'L H. SEAMAN.

Taken and acknowledged this 30th September, 1874, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John H. Clark and Samuel H. Seaman, parties to the above stipulation, being duly sworn, each deposes and says that he, Clark, resides in the southern district of New York; and he, Seaman, resides in
10 the eastern district of New York, and that he is worth the sum of eighty thousand dollars over and above all his just debts and liabilities.

JNO. H. CLARK.
SAM'L H. SEAMAN.

Sworn to this 30th day of September, 1874, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded this 30th day of September, 1874.

We consent that the New Orleans be bonded in the sum of $40,000, and that John H. Clark and Samuel H. Seaman be the sureties on the said bond.

Dated September 30, 1874.

SCUDDER & CARTER,
Libellants' Proctors.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of John H. Clark, of Yonkers, Westchester County, Samuel H. Seaman, of Brooklyn, Kings County, Cornelius H. Delamater, and John Baird, both of the city of New York, in the State of New York, and Alfred Moulton, of New Orleans, in the State of Louisiana, claimants of the steamer New Orleans, her engines, tackle, apparel, and furniture, to the libel of John S. Weeks and others, alleges and articulately propounds as follows:

First. That these claimants, at all the times in the said libel mentioned, were, and that they still continue to be, the owners of the said steamer New Orleans, her engines, tackle, apparel, and furniture.

Second. That these claimants have no knowledge of the matters in the second article of the said libel alleged, except that they admit
11 that on her said voyage the said schooner Allie Bickmore had on board a cargo of lumber, and they therefore deny the same and leave the libellants to such proof thereof as they may be advised.

Third. That these claimants admit that on the morning of September 6th, 1874, there was a collision between the said schooner and the said steamer; that prior to and at the time of such collision the said schooner had all her sails set, and had her lights set and burning, and that it was clear weather; that the steamer struck the schooner on her port bow, and that the schooner immediately fil'ed with water.

That as to the other matters alleged in the third article of the said libel, these claimants say that they have no knowledge thereof; that, as they are informed and believe, the said matters are not therein correctly stated, and they therefore deny the same, and leave the libellants to such proof thereof as they may be advised; and they say that, as they are informed and believe, the following is a true statement of the circumstances of the said collision: The collision happened at a few minutes after five o'clock in the morning; the steamer was at the time on a voyage from New York to New Orleans, and was sailing on a course nearly opposite the course of the schooner; she was well and sufficiently manned, apparelled, and equipped, with her lights set and burning brightly; in the charge of a competent master, and with a sufficient crew, who were attending to the discharge of their duties. The schooner when first seen bore on the starboard bow of the steamer, and was heading in a direction opposite to that of the steamer, and such that had the two vessels continued their respective courses they would by an ample distance have cleared each other.

When the two vessels had approached to within a few lengths of each other the schooner ported her helm so as to pass directly across the course of the steamer and in front of her bow; as soon as this movement was seen from the steamer the steamer was slowed, her wheel ported, so as if possible to pass the stern of the schooner, and
12 her engines then stopped, but that it was impossible then to prevent the collision, and the steamer struck the schooner on her port bow, cutting a considerable distance into her side.

Fourth. That the steamer did all that was in her power to prevent the said collision, and that the same was caused by the improper navigation of the schooner in changing her course across the steamer's bow; that when the schooner undertook to cross her bow all that the steamer could do to prevent the collision was to stop and to port her helm, which was done, but that it was impossible then to prevent a collision.

Fifth. That these claimants admit that the steamer, immediately after the collision, took the schooner in tow, and continued with her until the

next day, when they sighted the steamer America, which towed the schooner into Philadelphia, and that she is now there undergoing repairs.

Sixth. That these claimants admit that the steamer is now lying in the port of New York, and within the jurisdiction of this court.

Seventh. That these claimants deny the other matters alleged in the fourth, fifth, sixth, and seventh articles of the libel, and leave the libellants to such proof thereof as they may be advised.

Wherefore they ask that as to them the said libel may be dismissed, and they may recover against the said libellants their costs of this action, and that they may have such further and other relief in the premises as may be proper.

SAMUEL H. SEAMAN.

Affirmed to before me this 21st day of October, 1874.

JNO. J. LOUTH,
Notary Public, Kings Co.

13 (Endorsed:) U. S. district court, southern district of New York. John S. Weeks and others, ag'st The Steamer New Orleans, her tackle, &c. Answer. Man & Parsons, claimants' proctors, 56 Wall street, N. Y. Filed October 24th, 1874.

Hearing before Judge Blatchford.

U. S. district court, southern district of New York.

JOHN S. WEEKS ET AL.
vs.
THE STEAMER NEW ORLEANS.

We consent that the depositions of Thomas A. Martin and Frank Chandler, as witnesses on the part of the libellants, being taken de bene esse, at the office of Scudder & Carter, No. 66 Wall street, on the 15th day of October, 1874, at ten o'clock in the afternoon, and that when verified before any notary public, the same may be read on the trial of this cause.

Dated October 14th, 1874.

MAN & PARSONS,
Claimants' Proctors.

United States district court, southern district of New York.

JOHN S. WEEKS ET AL.
vs.
THE STEAMER NEW ORLEANS, &c.

Deposition of Thomas A. Martin, taken on the part of the
14 libellants, pursuant to the annexed consent, this 15th day of October, 1874.

Being duly sworn and examined by counsel for libellants, he testified:

My name is Thomas A. Martin; I am twenty-nine years of age; I am a mariner; I have followed the sea for fourteen years.

I was first officer of the schooner Allie Bickmore, in September, on her voyage from Woodstock to New York; she is a three-masted schooner of 390 tons register.

I remember the collision with the New Orleans; I was on deck at the time; it was about a quarter past five in the morning.

Prior to the collision I was in my berth in the after-house of the vessel, I had turned in at four o'clock; I heard Mr. Chandler, the second officer, shouting to the steamer; I jumped out of my berth and ran on deck, and saw the steamer two points or two points and a half on our port bow, about twice her length off from us; I ran forward on top of the forward house, and remained there until our vessel was cut into and settled away from the steamer by fil'ing with water. She cut into us about eighteen feet on the deck, on our port bow, just near the cathead.

They were ringing our bell when I came out of the companion-way; the weather was clear, and it was daylight; there was a very little wind from the eastward; there had been very little wind all night long; when the second officer came in charge, I gave him the course northeast by north; we had everything set on the schooner; we had the two side lights set and burning.

When I first saw the steamer there was no one in sight; the New Orleans is a propeller; I couldn't tell how fast she was moving; it might have been two minutes and a half or three minutes from the time I came up the companion-way till she struck us; that companion-way opens forward; I only put on my boots and nothing else when I jumped out of my berth; all our crew were on deck when I got up there; the captain has a separate cabin in the after-house.

The man on the lookout was Peter, I don't know his other name; after the collision we got our boats in the water, and got a hawser from the New Orleans, and was towed towards Delaware Breakwater, and took a tug-boat, which towed us towards Philadelphia, where the schooner now lies undergoing repairs; the steamer struck us at an angle of about twenty degrees, with the line of the keel running from the cathead in towards the foremast; her bow struck the foremast and carried it away; she cut us down to within about four feet of the keel; we had lumber stowed in there, as solid as it could be filled; I saw that lumber when it came out, and it was cut more or less; it was principally boards; some of it was cut clear off, and some part way; I am still on the schooner; the crew remained by the schooner till the afternoon that we arrived at Philadelphia, and then went ashore, and the next day they came down to the vessel and then left her, and have scattered.

I did not see the compass when I came on deck; the blow slewed our vessel round; I could see no change in the course of the steamer from the time I came on deck; our sails were not drawing any to speak of, as the vessel would roll, they would swing in; there wasn't wind enough to keep them full; I should judge we were going about a mile an hour.

Cross-examined:

My berth was in the forward cabin; the second mate was forward on top of the forward house when I got on deck; he was shouting then for the steamer to keep away, and was ringing the bell.

I did not hear him order the man at the wheel to luff; if any such order was given, it must have been before I came on deck; the first thing I heard was the second mate shouting for the steamer to keep away; that is what woke me out of my sleep; it was after that I heard the bell begin to ring; it wasn't more than a half minute from the time I woke till I got on deck; that is my best judgment of the length of time.

I could not have heard the order to luff, after I woke up in the condition I was, before I came on deck; if the second mate had ordered the man at the wheel to luff, after I got on deck, I should have heard it; I went on the starboard side of the schooner when I went on deck.

16 Redirect:

My cabin was in the forward part of the after-house. I heard the bell ring when I came on deck; when I came out of the companion-way.

THOMAS A. MARTIN.

Sworn before me this 15th day of October, 1874.

GEO. A. BLACK,
Notary Public, N. Y. Co.

United States district court, southern district of New York.

JOHN S. WEEKS ET AL.
vs.
THE STEAMER NEW ORLEANS, &C.

Deposition of Frank Chandler, taken on the part of the libellants, pursuant to the annexed stipulation, this 15th day of October, 1874.

Being duly sworn, he testified:

My name is Frank Chandler; I am forty-nine years of age; I am a seaman, and have been since 1837; I was second mate on the schooner Allie Bickmore, in September last, on her voyage from Woodstock, Florida, to New York, with a cargo of pitch-pine lumber, sawed to different sizes. The Allie Bickmore is a three-masted schooner of about 390 tons.

On Sunday, the 6th day of September, 1874, at a quarter past five in the morning, we were run into by the steamer New Orleans; we were then about forty miles southeast from Cape Henlopen; I was in charge of the deck at the time; my watch commenced at four o'clock; I was aft when the man on the lookout reported a steamer; I then
17 went forward and took a look at her; she was then about two to three miles off, about two points and one-half on our port bow.

She was coming for us, and when she was about three of her lengths off I hailed her, and got no answer; I was then on the topgallant forecastle, and I went to the bell pretty smart and rang it; it was about ten feet from where I stood; the steamer was then close to us; then I sang out to the man at the wheel to let her lull a half point; next thing she struck us; I gave that order to get out of the way if I could; there were two men in my watch; the man at the wheel and one on the lookout; the man on the lookout was Peter—I don't know his other name; he had been on board about seven weeks. We had the red and green lights on our schooner; they were burning and were burning up to eleven o'clock that day; we couldn't get time to take them down before eleven.

The course of the schooner was northeast by north; the wind was to the eastward, very light; we had all our sails set; we had a motion of about one and a half miles an hour through the water.

The steamer struck us on the port bow near the cat-heads, and cut into us to the middle of the deck and within four planks of the keel.

When I hailed the steamer, I could see no one on her; and saw no one on her till she was backing clear of the schooner.

After the collision the captain of the steamer sung out and asked our captain if he wanted any assistance. All hands was on our deck at the time the steamer struck us.

It was daylight when the steamer struck us; we could see about three or four miles off; when I ran aft to ring the bell, the man on the lookout was on the forecastle, and I told him to get the men out who were down below; the crew slept in the forecastle.

I could make out no change in the course of the steamer from the time I first sighted her till the time of the collision; the collision broke our foremast, the steamer's bow struck it and broke it.

The catheads are about ten feet from the heel of the bowsprit;
18 I couldn't tell which side of the cathead she struck because she carried away the cathead; she made a gap of about fifteen or twenty feet in our boat; carried away the port anchor; the lights was in the fore-rigging on the port and starboard sides; the red light was on the port side, and the green on the starboard; the foremast was broke just about the middle, and was hanging; it didn't fall; the rigging held it up; I am still connected with the Allie Bickmore, and she is still at Philadelphia undergoing repairs; the man at the wheel was Geo. Oberg; when I gave the order to luff, the vessel did not fall off, the wind was so light she did not answer the helm in the time before the steamer struck us.

Cross-examined:

I stood on the forward house, sir, when I gave the order to luff; I did not stand there all the time; I was standing on the topgallant forecastle when I was shouting to the steamer.

I shouted first and then rang the bell; the bell hung on the front part of the forward house very near the topgallant forecastle; it was one step from the topgallant forecastle to the bell—from where I stood when I was shouting it was about ten feet to the bell; I stood on the traveller and rang the bell; I was standing on the traveller when I gave the order to luff one-half a point; then I went forward on the topgallant forecastle again, and then aft, as quick as I could, too, on the starboard side.

Q. When you gave the order to luff, did not some one on your vessel say no, you should have ordered the schooner to keep away?

A. No, sir; I didn't hear no such a thing.

Q. Was there not some discussion as to whether you should not have ordered the schooner to keep away?

A. No, sir; there was nothing said from nobody.

Redirect:

We had a deck-load of lumber; the traveller runs from one bulwark to the other, it is a stick of timber to hold the main jib, and it is right in front of the forward house about four feet aft of the forecastle deck.

I went forward to the forecastle deck to take another look at
19 the steamer, and then went aft on the starboard side, not to get hurt; to get out of the way; the lights set were regulation lights, large size.

Recross:

Q. As soon as you hailed the steamer did you go right to the bell?

A. Yes, sir.

Q. Go as quick as you could?
A. Yes, sir.

FRANK CHANDLER.

Sworn to before me this 15th day of October, 1874.

GEO. A. BLACK,
Notary Public, N. Y. Co.

(Endorsed:) U. S. district court, southern dist. N. Y. John S. Weeks et al. vs. The Steamship New Orleans. Depositions of Thomas A. Martin and Frank Chandler. Scudder & Carter, proctors libellants. Filed January 5, 1875.

Notice.

District court of the United States for the southern district of New York.

JOHN S. WEEKS ET AL.
vs.
STEAMER NEW ORLEANS.

Please to take notice that Bernard Nelson will be examined (de bene esse) on the part of the libellants in the above-entitled cause before me, Edward L. Owen (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided) at his office, No. 71 Wall street, in the city of New York, on the 13th day of October, at 10½ o'clock in the forenoon of that day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated, New York, the tenth day of October, A. D. 1874.

Yours, &c.,

SCUDDER & CARTER,
Proctors for Libellants.

To MAN & PARSONS,
Proctors for Claimants.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this 13th day of October, in the year of our Lord one thousand eight hundred and seventy-four, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at number 71 Wall street, in the city of New York, in the said southern district of New York in the State aforesaid, Bernard Nelson, to testify and the truth

to say, on the part and behalf of the libellants in a certain suit or matter of controversy now pending and undetermined, in the district court of the United States, for the southern district of New York, at New York, wherein John S. Weeks and others are libellants against The Steamer New Orleans, her engines, &c.

And thereupon the said Bernard Nelson, having been by me
21 first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Bernard Nelson, and he did thereupon depose, testify, and say as follows, viz.: I am thirty years of age. I am a sailor; have been for sixteen years; in September past I was on the steamship New Orleans; I was quartermaster; I was bound on a voyage from New York to New Orleans and back; we started Thursday.

On the morning of the 6th of September I was at the wheel; I took the wheel at four o'clock; nobody was in the wheel-house with me; that wheel-house is just before the fore-mast on the forward house on the upper deck; I could not tell how high it is above the main deck; it has a door on each side, a window on each side, and three windows ahead of it.

That morning we struck a vessel, it was three minutes past five; I did not see anything of the vessel until the second mate came in the wheel-house and hollered to me to put the helm hard-a-port.

The second mate, William Bennett, was the officer of the deck that morning; there were three men in his watch.

When he hollered to me I put the helm hard-a-port, and he got hold of the helm too on the other side; then the captain came out from his room and stopped her; he rang the bell; he rang two bells one after the other.

Then we stopped, and at the same time, about a minute after, we struck the schooner; the vessel swung three-quarters of a point before we struck; before we changed our wheel our course was south by west half west; we had been running on that course since passing Barnegat; from the time I came to the wheel we had been running on that course.

When we struck the schooner we were heading southwest by south three-quarters south.

We struck the schooner about a minute after the mate came into the wheel-house; I can't tell where he came from; he came in through the door into the pilot-house, he came as quick as he could.

22 The door to the captain's room is in the after part of the pilot-house, and he came in through there; he was undressed.

The weather that morning was smooth; I could not tell how the wind was.

The windows in the pilot-house were closed; it was just about day break when we struck the schooner; after we struck the schooner we could see two miles around.

I have made eight trips in the New Orleans—six trips before this collision; I was away from her five months after the six trips; I had been quartermaster on her all the time.

I don't know what the mate and the three men in his watch were doing before the mate came into the pilot-house; there were three men beside myself in the mate's watch; I know the name of one man in the mate's watch, Philip Bazaine.

The mate had not been in the pilot-house before he came in hollering to me.

We struck the schooner on the port bow, and cut into her to her

fore-mast; we kept around the schooner after the collision until we got ready to take her in tow; we towed her into the breakwater; we started to tow her at seven o'clock, and got clear of her at three o'clock in the afternoon, and then we continued our voyage down to New Orleans.

I did not hear anything of the schooner until the mate hollered to me "hard-a-port."

I am not on the New Orleans now; I am going to sea as soon as I get another vessel.

Cross-examined:

Q. When you first saw the schooner was she heading across your bow?

A. Yes, sir; we were just pointing for her jib-boom; as soon as the mate called to me I looked up and saw the schooner heading across our bow, I saw her over our starboard bow; at that time the two vessels were about three ships' lengths apart.

Q. Were they not more, were they not four or five?

A. No, sir; not more than three.

23 Q. Are you sure that it was three-quarters of a point that you swung?

A. Yes; I looked at the compass in the wheel-house when she struck, and I saw how far we cut into the schooner; I mean we broke her deck as far amidships as the foremast; nobody asked me to come here and give this testimony; the schooner people did not ask me, I mean to be positive about that.

Q. Who told you where this office was?

A. I know all about these offices around here.

Q. And you mean to say that you came here at this time without any request or suggestion from any one for the schooner?

A. Yes, sir.

Q. Do you remember coming to my office about a week ago, and telling me about the collision?

A. Yes, sir.

Q. Did you not tell me that when you first saw the schooner she was distant at least five lengths of your vessel?

A. No, sir.

An affidavit sworn to October 2d, 1874, before John J. Louth, notary public, being shown witness, he says the signature to the affidavit is mine.

Affidavit marked for identification "No. 1, E. L. O. October 13th, 1874."

Re-direct:

Q. 8. You came here with me, did you not?

A. Yes, sir; at the time I came here I knew where I was coming.

BARNHART NELSON.

Subscribed and sworn to before me this 13th day of October, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

24 I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled, "An act for the more convenient taking of affidavits

and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled, "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled, "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea.

I further certify that notification of the time and place of taking the said deposition was given in writing by the proctors for the libellants to the proctors for the claimants, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, as appears from said notice, with the admission of service thereof hereto annexed, and that on the 13th day of October, in the year of our Lord one thousand eight hundred and seventy-four, I was attended by the proctors for the respective parties, and by the witness who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness and from his statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 13th day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[L. S.] EDWARD L. OWEN,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

(Endorsed:) U. S. district court, southern district of New York. John S. Weeks et al. v. The Steamship New Orleans, her engines, &c. Deposition of Barnhart Nelson on behalf of libellants, taken the 13th day of October, 1874, before me, Edward L. Owen, U. S. commissioner. Filed Oct. 15th, 1874.

THE ALLIE BICKMORE }
against
THE NEW ORLEANS. }

CITY AND COUNTY OF NEW YORK, *ss:*

Barnhart Nelson, being duly sworn says, I was a quartermaster on the steamer at the time of the collision. I was at the wheel. Took the wheel at four o'clock. The collision was at five o'clock and three minutes by the steamer's clock, which hung in the pilot-house.

My attention was called to the schooner by the order of the second mate, hard-a-port. The schooner was then about half a point on our star-

board bow. I saw her red light. She was about five of our lengths from us, and was headed directly across our bow.

The wheel of the steamer was put hard over, and she changed her course about three-quarters of a point before the vessel struck.

The captain came into the pilot-house when the second-
26 mate ordered hard-a-port. He rung to slow. Took hold the wheel and helped it hard over, then rung to stop. Both orders were obeyed.

BERNHART NELSON.

Sworn to before me, October 2, 1874.

JOHN J. LOUTH,
Notary Public, Kings County.

(Endorsed:) For identification as the deposition of B. Nelson, No. 1, E. L. O., October 13th, 1874.

WILLIAM H. BICKMORE sworn:

Was master of the Allie Bickmore; she was about eleven months old; was in command of her September 6th last; morning of September 6th, I was in cabin when the alarm was first given. I heard second officer shouting; could not understand what he said. I jumped out of bed and ran on deck immediately. I went up after-gangway on to quarter-deck, looked forward and saw the steamer coming directly towards us about two points on our port bow; she was about 150 or 200 yards off the New Orleans. I kept looking at steamer till she got within half a length of us, then I stepped back and looked at compass and she was heading NE. by N. I did not observe our sails till after steamer struck us; wind was very light air of wind; we had all sails set. I could not see we changed our course any, or that steamer did. When I came up gangway they were ringing our bell on forward house; could not see any one on steamer; it was light, all day-light; could see three or four miles, it was before sunrise; bell rang very little after I went on deck. I should judge steamer struck us at an angle of eighteen degrees with keel cut within four streaks of garboard and about eighteen feet in on deck. (Diagram No. 1 shows how they struck.) Chandler, second officer, had charge of watch on deck; he was on deck.

Peter Louis was on lookout. I discharged him at Philadelphia,
27 and he went to Baltimore four days after I reached Philadelphia;

(Here follows diagram marked page 26½.)

have not seen him since; don't know where he is. I went aboard the New Orleans; was sent for by him. Entrance to after end of house is on port side, and to forward end of house is on starboard side. When I got on deck I was four or five feet from wheel; when steamer got within half her length of us I looked at compass. I judged after collision wind was E. by S.; scarcely any at all. I did not go to forward part of vessel before collision. I stood still and looked right at steamer till she got within half her length.

Cross-examined:

From stem of schooner to cat-head is twelve or thirteen feet; from stem to foremast about twenty feet or perhaps a little more than that—twenty-three or twenty-four feet. There was a raised forecastle about four feet high, that extended to stem of vessel, extended aft about eighteen feet—within five feet of foremast; traveller was between fore-

board bow. I saw her red light. She was about five of our lengths from us, and was headed directly across our bow.

The wheel of the steamer was put hard over, and she changed her course about three-quarters of a point before the vessel struck.

The captain came into the pilot-house when the second-
26 mate ordered hard-a-port. He rung to slow. Took hold the wheel and helped it hard over, then rung to stop. Both orders were obeyed.

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Cross-examined:

From stem of schooner to cat-head is twelve or thirteen feet; from stem to foremast about twenty feet or perhaps a little more than that—twenty-three or twenty-four feet. There was a raised forecastle about four feet high, that extended to stem of vessel, extended aft about eighteen feet—within five feet of foremast; traveller was between fore-

castle and foremast, as high as forecastle resting on rails. The bell was on forward end of forward house; foremast went down through house; house projected a foot forward of foremast; bell was forward of foremast on top of forward house. I did not hear second mate shout keep away. I heard no order to luff on my vessel. I would have been likely to hear any order to luff that could have been heard by man at wheel that was given after I got on deck. I did not know at that time that an order to luff had been given. I was looking directly at steamer and my attention was called to her. If my vessel had luffed prior to the collision the effect was to take her across the bow of the steamer. Bulwarks of New Orleans amidships opposite gangway were about up to my breast.

Q. Assuming steamer to have been on course as seen by you when you came on deck, was not an order to luff given on your vessel before you came on deck, a wrong order?

A. I don't know that it was; the effect of such an order was not, I think, to carry schooner across bow of steamer.

28 Redirect:

The effect would have been she would have hit us all the same, but it might have giving a glancing blow. It would have brought us more athwart-ships of the steamer; going one knot or so an hour she would not answer helm in five minutes. Quite a surface swell about east. I did not notice man at wheel when I first came on deck.

SAMUEL L. CLAPP, sworn:

Was in command of the New Orleans, at collision, about 5 a. m. of September 6. I was asleep in a berth in my room abaft pilot-house on same deck with pilot-house—door opened from rear of pilot-house into my room. I was awaked by an order from second mate, Bennett, to quartermaster to put wheel hard-a-port. I judged they were in the pilot-house from their voices. I sprang out and without putting anything on, went into pilot-house. I saw directly ahead of us about three or four of our lengths off a schooner sails and red light—a little on starboard bow. I immediately pulled bell to slow and took hold of wheel to help second mate and quartermaster who were heaving it over to port; then I pulled one more bell to stop; then I watched schooner's light, took a range with window of our pilot-house to see if steamer answered helm. I saw very little change in our course, imperceptible up the time we struck schooner. There was a light air from southward and eastward; could see two or three miles; have no idea of rate schooner was moving. There was a heavy swell from SE. (No. 2 shows angle the vessel struck at.) The quartermaster's duty was to steer the ship and keep a lookout. I saw no one on deck but second mate and quartermaster at moment of collision. It was the second mate's watch on deck from four to eight. His duty was to keep a lookout and see that the men did work properly, washing ship and cleaning up decks. A minute or less after I rang to stop before collision; we were a propeller; rate about eleven and a half miles an hour at that time—statute miles; tonnage $1,448\frac{75}{100}$ tons. Till I rang to slow she was moving full speed; then we were about three ship's lengths
29 off I should judge—length 245 feet; ringing to shut off from full

(Here follows diagram marked page 28½.)

speed and stopping she would go three miles before stopping head-

way entirely. After ringing to slow, stop, and back, she would go one-quarter a mile from going full speed. I wrote to my owners respecting this collision. I have been a seafaring man thirty odd years. The watch was second mate, quartermaster, and three seaman on deck. Our bulwarks were four feet two or three inches high. A man to see forward must be on hurricane deck, on top of cabin on deck that pilot-house stands on; the deck to be washed is main deck below. After daylight, after five o'clock, when could see three miles, we were not accustomed to have lookout on topgallant forecastle; lookout always called away then to wash deck. Quartermaster understood it was his business then to be a lookout. That morning windows of pilot-house were closed; I noticed there was a mist on them; it was not so obscure but what I could see through them; I saw through them the schooner and her light through the windows as they were shut. I didn't notice any deviation in course of either vessel.

Cross-examined:

I could not with my range judge if schooner changed; when I got into pilot-house I don't think schooner could have been four or five of our lengths distant. (Statement shown.) This was made by me; the schooner was from two to five lengths off when I first saw her; shortly after collision I signed a statement, in which I said four or five lengths, and swore to it; I considered it true at the time. Steamer is 265 feet on deck and 245 feet on keel long. In front of our bow a figurehead of an eagle, gilded wood; eagle extended forward three or four feet from stem; our bowsprit was carried away at knight-heads, and both eagle's wings with it, which were attached to bowsprit; eagle intact except that; end of our bowsprit struck foremast of schooner; top of rail on topgal; lant forecastle is twenty-six or twenty-eight feet high from water-schooner's bulwarks were six or seven feet high. Captain Bick-
30 more called at my house one evening directly after collision; seen him twice since; been once at office of attorneys for libellants; saw libellants' counsel there, Mr. Scudder.

Redirect:

Our steamer steers very easily; I could not see she deviated in her course at all; bowsprit of our steamer was seven or eight feet long outside of knight-heads.

Defense.

U. S. district court.

JOHN S. WEEKS ET AL.
against
THE STEAMSHIP NEW ORLEANS ET AL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GEORGE H. OBERG, being duly sworn and examined as a witness for the claimants, pursuant to the stipulation hereto annexed, Mr. Parsons appearing for the claimants and Mr. Scudder for libellants, testifies:

I am twenty-eight years of age; I am a seaman by occupation; I am at present employed as a hand before the mast on the schooner Knickerbocker, and expect to sail on her for New Orleans on Saturday next, to-morrow; she belongs to Clark & Seaman's New Orleans Line.

I was one of the crew of the Allie Bickmore at the time of the collision between her and the New Orleans; I was in the captain's watch; and at the time of the watch was at the wheel, which I had had since four o'clock; the collision was about five o'clock; the second mate of the schooner was in charge at the time; my attention was first directed to the schooner by hearing the lookout sing out "a vessel right ahead," or "a vessel forward;" I did not see her at that time; that was about ten minutes before the collision; after
31 that I saw the steamer; I saw her right ahead over our starboard bow; she was then about a mile from us; the second mate ordered me to luff half a point; I gave her the wheel to luff; put it about halfways down; she minded her helm, came up; the vessels were about a mile distant at this time; up to that time we had been heading N. NE. one-half E. since I took the wheel; down to the time I got the order to luff neither vessel had changed her course, so far as I saw; I noticed the steamer when I got the order to luff; saw her then over our starboard bow; after the order to luff the schooner came luffing up; and the second mate commenced to shout; and after that he struck the bell; he did not shout before he gave me the order to luff; the wind was about a point free for the schooner; she was going about a couple of knots an hour; before I got the order to luff the steamer seemed to be coming right down on us in an opposite direction; after we lufted, then I saw the steamer on our port side; there was nothing said on our vessel when the second mate gave the order to luff, as to whether it was the right order or not; after that there was a talk among us, right after the collision; all the men were then present.

Cross-examined:

I once before sailed on the Knickerbocker; it was the last trip to New Orleans she made; I shipped on her the 7th of September; I came to ship on that vessel because I was looking for a place; I went on board her accidentally; no one directed me to her; the mate engaged me to ship on board of her; I never told him before I shipped I was on the Allie Bickmore; I never told any one on the ship or connected with the owners, Clark & Seaman, that I had been on the Allie Bickmore; I remained in Philadelphia after the Allie Bickmore went in there from Monday until Friday; I shipped on the Knickerbocker on Tuesday or Wednesday. I went to the wheel at four a. m.; the wind then was about east; all our sail was set; sheets were close-hauled by the wind.

Q. How many minutes elapsed between the time you heard some one sing out there was a vessel ahead and the time the mate ordered you to luff?

32 A. I can't tell the exact time, but I should think it was about five minutes.

Q. How many minutes elapsed between the order to luff and the time you saw the steamer over your port bow?

A. I think about the same—four or five minutes.

Q. How many minutes between the time you saw the steamer on your port bow and when she struck you?

A. I think about four or five minutes.

Q. How many minutes between the time you first saw the steamer over your starboard bow, and the order to luff?

A. I think about three to four or five minutes.

Q. How many minutes between the time you first saw the steamer and the time she struck you?

A. I think about ten minutes altogether. I can read and write in

English. This was my first trip on the Allie Bickmore. When the order to luff came I put the wheel down; the schooner came up so her sails shook; she came up to the wind in about a minute; so soon as she came up to the wind, I saw the steamer was about to strike us, and I didn't care any more for the wheel, and let it go; the steamer was about one-half a point on the starboard bow when I first saw her; she was a point and one-half on the port bow when she struck us; I can't tell how much—she came head right into us on the port bow; the morning was a little misty; the lookout sung out "vessel ahead"—his name was Pete; I was looking ahead at the time, but up to the time he sung out I didn't see the steamer; a little while after he sung out I saw her; I looked around and saw her; I saw her then very distinctly; saw the whole of her; then, when I luffed, I saw her freely on the other side; I think I saw her over the starboard bow three to four minutes.

GEORGE H. OBERG.

Subscribed and sworn to before me this 16th day of October, 1874.

JNO. J. LOUTH,
Notary Public, Kings Co.

33 (Endorsed:) U. S. district court. John S. Weeks et al ag'st The S. S. New Orleans et al. Deposition of George H. Oberg, taken pursuant to stipulation, &c. This deposition may be read upon the trial of this cause with like effect as if taken regularly before a commissioner. October 17, 1874. Scudder & Carter, libellants' proctors. Filed January 5, 1875.

U. S. district court.

JOHN S. WEEKS ET AL.
against
THE STEAMSHIP NEW ORLEANS, &C., &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

BENJAMIN POTTER, being duly sworn and examined as a witness for claimants, testifies:

I was steward of the Allie Bickmore at the time of the collision; had been on her about five weeks; joined her in New York; went on her to Fernandina, and was on the return from that place at the time of the collision. Have followed the sea since 1859; used to go as cabin-boy, then ordinary seaman for three years, during the war, on a U. S. ship; since then, off and on as steward, and before the mast. Understand navigation a little, such as taking the sun, working the reckoning, and so on.

I am twenty-seven years old. I left the Allie Bickmore at Philadelphia; came on to New York; called at the office of Messrs. Clark & Seaman; told them who I was; they gave me a place on one of their vessels, the George Washington; have been there until seven or eight days ago, then I did not like the place and left; did not feel well to fill the capacity; it was as porter; have remained in port since—sick; expect to go to sea again to-morrow, if I feel well enough, in the George Washington as porter; get $30 a month wages; went first as
34 cook at $50, but could not do the work, as I had never been cook on a steamer before; had been steward.

Don't know the ordinary wages of a porter; the captain told me

$30; that is what he gave me. Joined the Geo. Washington September 16th last.

I was on the deck of the Allie Bickmore at the time of the collision; don't remember the hour; it was about five o'clock; I was on the deck from four o'clock; was then called up to make coffee. Before the collision I had been standing in front of the galley door, on the starboard side of the vessel, a little more amidships. We had a deck load of lumber which reached as high as the top of the galley. The floor of the galley was flush with the main deck, and there was a space in the lumber by the galley door, and steps in the lumber to go down, and I stood on these steps, so that I was about half my height above the roof of the galley.

The schooner was going about three knots; had all sail set. The wind was a good ways off on the starboard side; the wind was abaft the beam; the smoke-pipe inclined about two points on the port bow.

The galley was on the starboard side of the forward house; the foremast passes through the forward part of the forward house.

My attention was first called to the steamer by the report "Sail-ho!" from the man on the lookout. He stood between the house and the forecastle. The second mate then stood aft; he walked over the lumber to where I was leaning. The man on the lookout then said she was a steamer, and I could see she was a steamer myself. She bore a good way on the schooner's starboard bow.

After that the second mate gave the order to luff; hollo'ed out loud to luff. Down to the time the second mate gave the order to luff the schooner did not change her course in any way.

Down to the time the order to luff was given, the steamer seemed to be coming bow on. She was coming in an opposite course, but was a good way on our starboard bow; she bore about two points off our starboard bow.

35 I don't know what the man at the wheel did when the order to luff was given; I only saw the schooner come round.

I told the mate the order was wrong, and he told me to mind my own business.

Did not tell the mate what the order should have been. He then stood right in front of me on the house. The schooner went right around when the order to luff was given.

I went to the afterpart of the port shrouds, the port, after the order was given. I saw the steamer over the schooner's port bow while we were going around. After the schooner came round the mate ran aft and hallooed, and I put my head in the forecastle and hallooed. At the same time the bell rang; think it was one of the men who grabbed the string as he ran out of the forecastle; the crew came on deck; they were all on deck before the collision and kept on hallooing till the steamer struck.

The steamer struck us in the afterpart of the cat-heads on the port side.

It was only a few seconds after the order to luff to the collision; did not take notice whether the sails of the schooner shook, but she was going round at the same time she was struck.

After the order to luff, I could see nearly the whole of the steamer's starboard side; before that could see hardly any of it.

Cross-examined:

After I left Philadelphia I came straight to the employment of Clark & Seaman. I went into their employment the second day after I

reached New York. I got forty dollars on the schooner per month. I have told some of my friends that I expected to make a good thing out of this business. I meant that as long as the case was going on I would be kept ashore and paid; that was what I asked. I went to Clark & Seaman about getting employ. I told them that I wanted to stay ashore and be paid wages during this case. They said they couldn't do that, but would put me on one of their boats and give me
36 what occupation I thought I could do. They then paid me as cook fifty dollars. I told my story to them before they employed me.

When, on my direct examination, I said a few seconds after the order to luff, before the steamer struck us—I meant a few minutes. The crew got on deck about two seconds before the steamer struck. The steamer struck us, as I show by the diagram. The sheets were a good ways out, but not quite free. I should judge by the looks of the sheets we were five to six points off the wind. The wind was light, the sails were full, the steamer was two miles off when I first saw her. I can't exactly give the time between my seeing the steamer and the order to luff. It was about fifteen or twenty minutes or so. When the order to luff was given the steamer was quite a ways off, say about one-quarter of a mile. She was not then heading directly on us, but by us on our starboard side. When the order to luff was given the schooner kept coming round until the steamer struck us. I couldn't tell if the schooner steadied after the order to luff; she did not come so far round as to have her sails shake. The schooner did not move so rapidly after the order to luff as before, but she was going ahead as she was coming around. She was going about three knots; this was my judgment. I have been a sailor. The rate of three knots was before the order to luff was given. The schooner handled pretty well—was quick on her heel. As the wind and sea was then, I can't tell how long it would take on an order to tack to bring her around; I think about twenty seconds. I suppose the helmsman, when the order was given, put his wheel hard down, as hard as if he were tacking the ship. I didn't see what he did; I was looking at the steamer. The schooner came into the wind the same as if she had been tacking, only she didn't shake.

Redirect:

When you tack ship the wheel is put hard over as far as it will go. As the wind and sea were that morning, the vessel would
37 come up more quickly with the wheel hard over than if it were not put over so much. I could not see how much the wheel was put to port.

BENJAMIN POTTER.

Subscribed and sworn to before me this 27th day of October, 1874.
JNO. J. LOUTH,
Notary Public, Kings County.

(Endorsed:) U. S. district court. John S. Weeks et al., against The Steamer New Orleans, &c. Deposition of Benj'n Potter, taken pursuant to stipulation, &c.

This deposition may be read upon the trial of this cause with like

effect as if taken regularly before a commissioner. October 27, 1874. Scudder & Carter, libellants' proctors. Filed February 5, 1875.

(Here follows diagram marked page 36½.)

WILLIAM H. BICKMORE, recalled:

This is a diagram of forward part of deck of my schooner, No. 3. From stem to cathead around the curve of bow is twelve feet, and from cat-head to afterpart of topgallant forecastle around curve is eleven feet, and from there to traveler is about five feet. After collision from stem to commencement of break was seven feet of solid wood around curve; there was sixteen feet of break on outside around curve extending to afterpart of topgallant forecastle. Forward standing rigging was not carried away; that was about six feet aft of traveler. The dotted line indicates line and extent inboard of cut; it was twenty feet long in length inwards, on deck; bowsprit of steamer went through jib and tore it to pieces; jib swings four feet clear of foremast.

Cross-examined:

On forward side cut was not much ragged, on after side it was; forward side a foot was ragged; after side three feet below, was shattered.

Redirect:

We drew fifteen feet before we were run into.

38 *For libellant.*

U. S. district court, southern district of New York.

JOHN S. WEEKS ET AL.
vs.
THE STEAMER NEW ORLEANS.

THOMAS A. MARTIN, a witness on the part of the libellants, being sworn and examined by the proctor for the libellant, testified:

I have made a voyage to Florida and back since my former examination. I was first mate of the Allie Bickmore at the time of the collision. My watches on deck on the night before the collision were from six p. m. to eight p. m., and from twelve m. until four a. m.; during both these watches I had taken the speed of the vessel from the patent log, Massey's patent log. That is a brass instrument with flanges and machinery inside a brass tube with dials, calculated to indicate 100 miles.

I took the knots from this instrument at four p. m., at eight p. m., at twelve m., and at two am. on the night of the collision. The vessel was going two knots an hour on each of these times; at two a. m. I hauled the log in and did not throw it over again.

Q. Why did you not throw it over again?

(Objected to.)

A. I was afraid it would take bottom and get sand in it and injure it.

Q. How would the log get sand in it?

A. Through the cylinder or revolving shaft.

Q. Was it not always liable to do this?

A. Not when the vessel was going more than one knot or a knot and a half.

Q. Had you observed anything in the speed of the vessel which induced you not to throw the log over again?

A. I observed that the wind was lessening all the time, that
39 was the reason I did not throw it out. I kept the log-book on the Bickmore. It is in my handwriting. My practice was to write the entries of each day between four and six p. m., of the following day; I transcribed into it from the log-slate, which was kept by me in my watches and by the second mate in his watches.

The entries in the log-book of the 5th and 6th of September, 1874, shown witness and he states that they are in his handwriting.

Copy of these entries are annexed to deposition by consent of counsel, subject to like objection as original.

THOMAS A. MARTIN.

Sworn to before me this 29th day of January, 1875.

GEORGE A. BLACK,
Notary Public, N. Y. C.

Journal from Woodstock, Fla., towards New York.

(5th day of September, 1874.)

H.	K.	½K.	Course.	Winds.	Remarks.
1	2	.....	East ...	.....	The first part of this day light winds and fine weather.
2	2	.....	.....	.....	
3	2	.....	.....	.....	
4	2	.....	.....	.....	P. M., tacked to the northard, in topmast stay sails.
5	2	.....	North..	.....	
6	2	.....	.....	.....	
7	2	.....	.....	.....	P. M., sounded in 30 fathoms.
8	2	.....	.....	.....	
9	2	.....	.....	.....	
10	2	.....	.....	.....	
11	1	.....	.....	.....	
12	1	.....	.....	.....	
1	.....	.....	Calm ...	.....	
2	.....	.....	.....	.....	A. M., calm and clear weather.
3	.....	.....	.....	.....	
4	.....	.....	.....	.....	
5	.....	.....	.....	.....	A. M. sounded in 20 fathoms.
6	.....	.....	.....	.....	A. M., light winds and fine weather. Sighted a schooner heading
7	2	.....	N by E	E. N. E.	to the southard.
8	2	.....	.....	.....	
9	2	.....	.....	.....	
10	2	.....	.....	.....	
11	2	.....	.....	.....	A. M., sounded in 18 fathoms.
12	1	.....	.....	.....	Long. by D. R., 75-30.

40 Distance, 30; diff. of lat., 22; departure, 14; Lat. by D. R., 37-48; lat. by ob., 37-46.

(6th day of September, 1874.)

H.	K.	½K.	Courses.	Winds.	Remarks.
1	2	.....	NE. by N.	E. S. E..	The first part of this day light winds and fine weather.
2	2	.....	.....	.....	
3	2	.....	.....	.....	P. M., sighted a steamer steering S. by W.
4	2	.....	.....	.....	
5	2	.....	.....	.....	
6	2	.....	.....	.....	P. M., sounded in 17 fathoms
7	2	.....	.....	.....	
8	2	.....	NE. by N.	E. S. E..	
9	2	.....	.....	.....	
10	2	.....	.....	.....	
11	2	.....	.....	.....	
12	2	.....	.....	.....	P. M., light winds and fine weather.
1	2	.....	.....	.....	
2	1	.....	.....	.....	
3	1	.....	.....	.....	
4	1	.....	NE. by N.	E. by S..	A. M., very light winds and clear weather. At 5.15 a. m. was run into by the steamer New Orleans, we keeping our course, it being clear at the time, and had all our lights and burning brightly when the steamer was within a mile of us; rung our forward bell and shouted for her to keep clear, but they paid no attention, the steamer struck us on the port bow, cutting us half into the vessel. Vessel immediately filled with water at seven a. m. The steamer New Orleans took us in tow and started for Delaware Breakwater, vessel towing heavily.
5	1	.....	.....	.....	
6	.....	.....	.....	.....	

(Endorsed:) U. S. circuit court, southern district of New York. John S. Weeks et al., vs. The Steamship New Orleans. Deposition of Thomas A. Martin. Scudder & Carter proctors, for libellants. We consent that the within deposition be read on the hearing of this cause, subject to all legal objections. January 30, 1875. Man & Parsons, claimant's proctors. Filed March 10, 1875.

41 *For defense.*

U. S. district court, southern district of New York.

JOHN S. WEEKS ET AL.
vs.
THE STEAMSHIP NEW ORLEANS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WILLIAM BENNETT being duly sworn as a witness for the claimants, testifies:

I was second mate of the New Orleans at the time of her collision with the schooner Allie Bickmore; I am still attached to the New Orleans in the same capacity. I joined her in November 1, 1873. Have remained on her as second mate from that time until now, except for one trip.

The collision took place in my watch on the morning of Sunday, September 6, 1874. My watch begun at four o'clock in the morning. The collision took place at three minutes after five. Previous to the collision the watch was called to wash decks. That was at twenty minutes before five o'clock. It was then daylight. The day broke at half-past four good—at twenty minutes after four. Down to the order to wash decks one of my watch had been stationed on the forecastle on the lookout. Don't remember his name. When the order was given to wash decks the man on the lookout came down from the topgallant forecastle to help, and I told the man at the wheel to keep lookout. His

name was Bernard Nelson. Gave him the order to keep lookout at the same time the other man came from the topgallant forecastle.

The men proceeded to wash decks on the forward part of the vessel.

Q. What first called your attention to the schooner?

42 A. By hearing some one call out steamer ahoy. I went over on the *the* starboard side and looked over the rail. I saw the schooner. She bore a little on our starboard bow. I could see her green light. I did see it; went forward on top of the forward house to the pilot-house, which is on top of the forward house. I could not see the schooner again till I got on the steps going up on the forward-house. I was on the starboard side. Then saw the schooner again. She bore about three-quarters of a point on the starboard bow.

The steps are in the forward end of the forward house, one on each side, going up fore and aft. The pilot-house is on the front of the top of the forward house, about eight feet, eight or nine feet above the main deck. It is about eighty feet from the pilot-house to the stern of the vessel.

When I got up the steps on the top of the house I again looked and saw the schooner. Turned sideways for the purpose. She still bore a little on the starboard bow.

I then went in the pilot-house. Before I went in I gave an order to the man at the wheel. Sang out hard-a-port, then I opened the door and went in. I noticed that the schooner had altered her course between the time I first saw her and I got on the steps.

I noticed that her green light had shut in so you could not see it. She was heading across our bow nearly. This was before I gave the order to hard-a-port.

The order hard-a-port was obeyed. The captain came into the pilot-house. Was there about as soon as I got there. Might have been one or two seconds after. The bells were rung to stop, two bells, first one then another. Believe the captain rang them.

The steamer changed her course very little to the collision—a little over a quarter, perhaps half a point; we were sailing about 10½ knots an hour; that was about her usual speed in fine weather.

We struck the schooner just forward of the foremast.

Q. If the schooner had not changed her course, how would the two vessels have passed each other, and how far apart would they have been?

(Objected to.)

43 A. About one-eighth of a mile apart; might have been a little less, might have been a little more; the schooner would have passed on our starboard side.

Cross-examined:

I was standing right abreast main hatch on starboard side when I first saw schooner. The main hatch is between forty and fifty feet aft of the forward end of the forward house; I was on the main deck washing off the main deck. The three men who were in the watch with me were with me and were also scrubbing the deck with a broom.

The bulwarks were four feet and a half to five feet high along the side of the New Orleans. When I heard the hail of steamer ahoy, I went across the deck and looked over the starboard side. I could see nothing of the schooner without going to the side; the hail I heard was that of one man; I only heard it once; I did not respond to it. When I saw the vessel I went forward, right forward, and went on top of the forward house to the pilot-house. I did not sing out anything

as I went along; I went up the steps and turned sideways and took a look at the schooner again. I went quick as I could from the bulwark by the main hatch to the pilot-house; I looked over my right shoulder when I was turning on the step to look at the schooner; I should say she was then three ship lengths of our ship off us. When I first saw her at the bulwarks she was half a length further off; it took a very short time to go from there to the pilot-house. I was right at the pilot-house door, or a step or two, before I got to the door when I gave the order to hard-a-port. I gave that order about as loud as I could speak. I didn't give it before, because I couldn't see as I came along. I could not tell if schooner had altered her course; I did see her when I got on the steps; I think there are six steps on the ladder; I was on the fifth step when I turned. In the position the schooner was at the time, I had to be on the top step to see her hull; I could have seen her spars from the main deck as I came along, but I did not look.

44 The men on watch staid washing the deck; they did not go forward with me; after giving the order to hard-a-port I went into the pilot-house.

From the place where I stepped off the ladder on to the top of the forward house, it is two steps to the door of the pilot-house.

I laid hold of the wheel as soon as I got inside of the pilot-house, and helped the man heave the wheel over hard-a-port. He was heaving it over as I came in. The course of the steamer was S. by W. ½ W. I had seen the compass at twenty minutes before five, when I went out to wash down decks, and she was heading that course then. When I went in to help heave the wheel over, she was just commencing to go over to the westward from that course. She had gone over about half a point from the course by the compass, when we struck the schooner. The captain came in almost instantly after me, and laid hold of the wheel, too, and rung the bells to stop.

The engine was stopped before the collision. The first time I saw the schooner, she was heading about a half a point on us; I should judge her course was northeast by north. She had all her sails on. I did not notice how they were drawing nor how they were set. The steamer had no sails set. The day was a fine bright day, a very little hazy on the water before sunrise. The wind was about eastsoutheast. I had paid no particular attention to the wind that morning.

Q. Did you observe how much of a breeze there was?

A. A vessel under the sail she had on might go three miles or three miles and ahalf an hour.

(Answer objected to as not responsive.)

Q. What kind of a wind was it, strong or light?

A. A light breeze. When I first saw the schooner she was near enough for me to distinguish her hull, and the people on board of her. I did not observe how deep she was in the water. When I turned round and looked at her from the ladder the schooner was heading four or five points on our bow. That would be for four points, east

45 by north, and for five points east. I mean to say she had changed her course four or five points from the course when I first saw her. It was fifteen or eighteen seconds or half a minute from the time I first saw the schooner until I got into the pilot-house. When I first saw the schooner she bore about southwest by south from us.

Q. Was she not in such a position as you would consider her heading for you?

A. She was not heading directly for us.

(Question repeated.)

(Objected to as already answered.)

A. I call a vessel which is heading in an opposite direction right for you, heading for you?

Q. Were the courses the schooner and the steamer were on, intersection courses?

A. I do not know what that means.

Q. I mean were the courses such as would cross each other at some point?

A. They would not have crossed, they would have gone clear of each other.

Q. Do you know what the course of a vessel is?

A. The point we steer by.

Q. Do you know what the track of a vessel is?

A. The track is the distance the vessel has passed over.

Q. Would the track of the steamer and the track of the schooner have crossed each other as they were sailing, when you first saw the schooner?

A. No; they would not. We struck the schooner just forward of the fore-rigging on the schooner's port side, and with the steamer nearly head on—a little glancing aft because we were swinging at the time.

Q. What part of the bow of the schooner did the steamer strike?

A. Not on the bow—just forward of the fore-rigging; we cut into the schooner—and lay together so for an instant, and the bow of the steamer pointed a little toward the stern of the schooner.

46 Redirect:

I have followed the sea about twenty years, and have been second mate on steamers for three years.

WILLIAM BENNETT.

Examination reduced to writing, subscribed, and sworn to before me, this 23d day of January, 1875.

JOHN P. KINGSFORD,
Notary Public, New York Co.

(Endorsed:) U. S. district court, southern district of New York. John S. Weeks et al. vs. The Steamship New Orleans. Deposition of Wm. Bennett. Man & Parsons, claimants' proctors, 36 Wall street. Filed March 10, 1875.

U. S. district court.

JOHN S. WEEKS AND OTHERS
vs.
THE STEAMER NEW ORLEANS.

BLATCHFORD, J.:

This is a libel filed by the owners of the schooner Allie Bickmore, to recover for the damages sustained by them through a collision which occurred between that vessel and the steamer New Orleans, on the morning of the 6th of September, 1874, at a little after five o'clock. The schooner was bound from Fernandina, Florida, to New York, with a cargo of lumber, and the steamer was bound from New York to New Orleans. The collision occurred in the Atlantic Ocean, off the shore of New Jersey.

The libel alleges, that prior to and at the time of the collision, the

schooner had all her sails set, and was steering northeast by
47 north, with light winds from the eastsoutheast; that the steamer was seen at a distance of three miles, and, when within a mile of the schooner, the bell of the latter was rung, and her crew shouted to the steamer to keep off; that the steamer paid no attention to such signals, but bore down on the schooner and struck her on the port bow, cutting half into her, and said schooner immediately filled with water, and would have sunk but for her cargo;-and that the collision occurred through the negligence of the steamer, and without fault on the part of the schooner.

The answer avers that the steamer was sailing on a course nearly opposite the course of the schooner, and was in charge of a competent master, and with a sufficient crew, who were attending to the discharge of their duties; that the schooner, when first seen, bore on the starboard bow of the steamer and was heading in a direction opposite to that of the steamer, and such that, had the two vessels continued their respective courses, they would, by an ample distance, have cleared each other; that when the two vessels had approached to within a few lengths of each other, the schooner ported her helm, so as to pass directly across the course of the steamer, and in front of her bow; that, as soon as this movement was seen from the steamer, the steamer was slowed, her wheel ported, so as if possible to pass astern of the schooner and her engines then stopped, but that it was impossible then to prevent the collision, and the steamer struck the schooner on her port bow, cutting a considerable distance into her side; that the steamer did all that was in her power to prevent the collision, and the same was caused by the improper navigation of the schooner, in changing her course across the steamer's bow; and that, when the schooner undertook to cross her bow, all that the steamer could do to prevent the collision was to stop and to port her helm, which was done, but that it was impossible then to prevent a collision.

The schooner had her lights set and burning, the weather was clear, there was already so much of daylight that the schooner herself could be seen, irrespective of her lights, at an ample distance, the wind
48 was light, and the schooner was making but slow progress through the water. Under these circumstances, the fact of a collision is evidence of great negligence somewhere. It being the duty of the steamer to avoid the schooner, the presumption of negligence is on the steamer, and it is for her to relieve herself from the burden. She has undertaken to show that she would have avoided the schooner but for the movement of the schooner, by porting, which brought the schooner suddenly across the bow of the steamer, when otherwise the schooner would have passed safely on the starboard side of the steamer.

Great negligence is shown on the part of the steamer, in not having discovered the schooner sooner than she did, and in not having had a lookout stationed at a proper position at the bow of the vessel, and vigilant in the discharge of his duty. At the approach of day the lookout who had previously been stationed forward was withdrawn, the officer of the watch and his men were engaged in washing the decks, they were none of them in a position to see ahead, and the duty of looking out for approaching vessels was confided to a quartermaster who was alone in the pilot-house engaged in steering the vessel, and who had the glass windows in front of him closed. This quartermaster has been examined as a witness for the libellants. The pilot-house, in which he was, was on the upper deck, on the forward house, just before the foremast. The quartermaster testifies that he saw nothing of the schooner until the

second mate, who was the officer of the watch on deck, came into the pilot-house and directed him to put the helm hard-a-port; that the second mate assisted in porting the wheel; that the captain then came from his room and rang two bells and stopped the steamer; and that the steamer swung to starboard, by the porting, three-quarters of a point, from south by west half west, before she struck the schooner; that having been her course for some time previously, so that, when she struck the schooner, she was heading southwest by south three-quarters south. It also appears from the testimony of the quartermaster, that as soon as the second mate gave him the order to port, he looked
49 up and saw the schooner over his starboard bow, heading across his bow. The vessels at that time were very near each other. The quartermaster says they were not more than three ship's lengths apart In a statement given by him to the claimants' proctor eleven days before, he had said that they were about five of the steamer's lengths apart.

The master of the steamer, also, was sworn as a witness for the libellants. He says he was aroused from sleep by the order of the second mate to the quartermaster to put the wheel hard-a-port; that he was sleeping in a berth in his room abaft the pilot-house, on the same deck, a door from the rear of the pilot-house opening into his room; that he sprang up, and, without waiting to put anything on, went into the pilot-house, and saw the schooner directly ahead, or a little on the starboard bow, about three or four of the steamer's lengths off; and that he immediately pulled the bell to slow, and took hold of the wheel to help port it, and then pulled a bell to stop, and watched the schooner's red light, putting it in range with the window of the pilot-house, to see if the steamer answered her helm, but saw very little change in the course of the steamer before the two vessels collided. He further says, that the steamer was a vessel of between 1,400 and 1,500 tons burthen; that she was running, at the time, at the rate of about 11½ miles an hour, which was full speed; and that by ringing to slow, stop, and back she could not be stopped from full speed in a distance of less than a quarter of a mile, which is a little over six and one-third times her length.

The only other witness from the steamer who was examined was the second mate, who was examined for the claimants. He testifies that he, at twenty minutes before five o'clock, it being then daylight, called the lookout away from the topgallant forecastle to help wash the decks, and told the quartermaster in the pilot-house to keep lookout. His attention was first called to the schooner by hearing some one call out, "steamer ahoy." This was a cry from the schooner. He ran to the starboard side of the steamer and looked over the rail and
50 saw the schooner a little on the starboard bow, and three and a half of the steamer's lengths off, or about 850 feet. This was a space over which the steamer, at a speed of ten miles an hour, would pass in less than one minute, allowing nothing for any movement of the schooner towards the steamer.

Here, then, on the concurrent testimony of these three witnesses from the steamer, we find her rushing on at this speed, with no proper lookout, and in full daylight, approaching within 850 feet of the schooner, before discovering that there was a vessel in her way, and then notified of the proximity of the schooner by a cry from that vessel. This was negligence, sufficient to cause the collision, and, presumptively, was the cause of it.

But, it is claimed that the schooner ported her helm and threw herself into the path of the steamer.

The second mate of the steamer testifies that when he looked over the rail on the starboard side of the steamer, and saw the schooner a little on his starboard bow, he saw a light on the schooner, one light, and noticed that it was her green light, that he then went up the steps on the starboard side to go to the pilot-house, that when he got up the steps he looked at the schooner again and saw she bore about three-quarters of a point on his starboard bow, and that she had altered her course from the time he looked at her over the rail, and had shut in her green light, and was heading nearly across the bow of the steamer; that he noticed all this before he gave the order to hard-a-port; and that the steamer changed her course, by the porting, from a quarter, to a half of a point before the collision.

On cross-examination he says: that when he looked at the schooner, after getting up the steps, she was three of the steamer's lengths off. He makes the change in the schooner's course to have taken place when the schooner was between three lengths and three and a half lengths of the steamer off, that is, between 735 feet and 858 feet. It is satisfactorily established, by the evidence, that the steamer's stem struck the schooner on the port bow of the schooner, and cut into her
51 at an angle of about from eighteen to twenty degrees with the line of the keel of the schooner. As the steamer's course, at the blow, was southwest by south, three-quarters south, and the direction of the blow was the same as such course, the course of the schooner at the time of the blow must have been as nearly as possible a course a point and three-quarters to the eastward of northeast by north three-quarters north, that is, northeast. The second mate of the steamer admits that when he first saw the schooner she was heading about half a point onto the steamer. He makes the course of the steamer at that time to have been, by the compass, south by west half west, and says that the course of the schooner at that time was northeast by north. If the course of the schooner was northeast by north, and the course of the steamer was south by west half west, the schooner was heading a point and a half on to the steamer, instead of half a point. If the course of the steamer was south by west, half west, and the schooner was heading half a point on to the steamer, the course of the schooner was north northeast. In either case, the course of the schooner was a course drawing on to the course of the steamer, and not drawing away or diverging from it. Under such circumstances, any porting of the helm of the schooner, resorted to at the distance off given by the second mate of the steamer, was a movement, in extremis, brought about by the fault of the steamer in approaching so near to the schooner, and not to be attributed to the schooner as a fault. On the facts testified to by the second mate of the steamer, and with the speed of the steamer, and the positions and proximity of the two vessels, there would have been a collision, even if the schooner had not made such a change as the second mate of the steamer testifies to.

This view as to the time when the change by the schooner was made is confirmed by the testimony of the second mate of the schooner, who was the officer of the watch on her deck at the time. He testifies, that he was aft when the man on the lookout reported a steamer; and that he then went forward and saw the steamer about two to three
52 miles off, about two points and a half on the port bow of the schooner. He gives the course of the schooner as northeast by north, and this agrees with the testimony of the first mate of the

schooner. The second mate of the schooner further says, that the steamer was coming for him, and that when she was about three of her lengths off he hailed her. This was the hail which attracted the attention of the second mate of the steamer. He also says, that he got no answer; that the steamer was then close to him; and that he then told the man at the wheel of the schooner to let her luff half a point; and that then the vessels struck. It required a luff of only a point to bring the schooner so as to head northeast. She probably did, at the time, luff a point, and thus this accords with the testimony of the witnesses from the steamer.

In so far as there may be anything in the testimony of Oberg, the man at the wheel of the schooner, or of Potter, the steward of the schooner, which militates against the foregoing conclusions, such testimony is unreliable. The course of the schooner being northeast by north, or, even as Oberg puts it, north, northeast half east, it is impossible to believe that the steamer was seen over the starboard bow of the schooner at any time, and equally impossible to believe that the second mate of the steamer, when at first he saw a light, and only one light, on the schooner, saw her green light and not her red light.

This is a clear case for the application of the rule announced in the case of The Carroll, 8 Wallace, 302, that fault on the part of a sailing vessel at the moment preceding collision does not absolve a steamer which has suffered herself and such sailing vessel to get into such dangerous proximity as to cause inevitable alarm and confusion, and collision as a consequence; and that the steamer, as having committed a far greater fault in allowing such proximity to be brought about, is chargeable with all the damages resulting from the collision.

There must be a decree for the libellants, with costs, with reference to a commissioner to ascertain and report the damages.

Henry J. Scudder, for the libellants.
John E. Parsons, for the claimants.

53 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the thirty-first day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the Hon. Samuel Blatchford, district judge.

JOHN S. WEEKS AND OTHERS
against
THE STEAMER NEW ORLEANS, HER TACKLE, &c.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against the steamer New Orleans, her tackle, &c., the damages by them sustained by reason of the collision in their libel set forth, with their costs to be taxed; and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report the same to this court with all convenient speed.

SAM'L BLATCHFORD.

(Endorsed:) United States district court for the southern district of New York. John S. Weeks and others vs. The Steamer New Orleans, &c. Scudder & Carter, proctors for libellants. Man & Parsons, proctors for claimants. Inte'y decree for libellants' costs and order of reference. Filed the 31st day of May, 1875.

54 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 31st day of May, in the year of our Lord one thousand eight hundred and seventy-five.

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(Signed) SAMUEL BLATCHFORD.

GEO. F. BETTS, clerk.

(Endorsed:) United States district court for the southern district of New York. John S. Weeks and others vs. The S. S. New Orleans, &c. Scudder & Carter, libellants' proctors. Man & Parsons, proctors for claimants. Certified copy. Entry decree for lib'ts, costs, and order of reference. Filed the 31st day of May, 1875. Due and timely service of a copy of the within is admitted, June 1st, 1875. Man & Parsons, claimants' proctors. Ent'd, J. B. C.

55 *Reference to ascertain damages.*

U. S. district court, southern district of New York.

JOHN S. WEEKS AND OTHERS
vs.
THE STEAMER NEW ORLEANS, HER TACKLE, &c.

JUNE 12TH, 1875.—Pursuant to notice of reference, parties appear. Libellants call WILLIAM H. BICKMORE, being sworn, says:

The Allie Bickmore was 390 tons, custom-house measurement; her carrying capacity was 650 tons; she was built in November, 1873, completed then and ready for sea. She sailed on her first trip in December, 1873. She went from Boston to Portland, Maine, and thence to

Cuba, and thence back to New York; then she went to Matanzas and back to New York. She had made three voyages to Cuba and one to Florida before the collision; she was on her second voyage at the time of the collision. She was built at East Boston by Abel Gove; she cost complete about $38,000; that was before she was coppered; she was coppered in April, 1874; that cost about $2,200. At the time of the collision the Bickmore was worth $39,000. At the time of the collision we were about forty miles southeast of the capes of the Delaware on a voyage to New York with a cargo of pine consigned to the St. Mary's River Lumber Company. Mr. Howell is their agent. I collected freight on 337,000 feet of lumber; we were to have ten dollars under the charter, but we made a deduction; we delivered the cargo at Philadelphia; the reduction was to meet the expense of getting the lumber from Philadelphia here. The Bickmore demurrage was eight cents a ton on her carrying capacity; that is the market rate. The vessel's carrying capacity was 650 tons. The collision occurred on the 6th day of September, 1874; we were about two days from New York at the time of the collision; it would take seven days to have dis-
56 charged that cargo in New York. The New Orleans towed us to the capes of the Delaware, and there the captain of the New Orleans engaged the tug America to tow us to Philadelphia. I paid the bill now shown me for towage, $275.

(Same offered in evidence, marked Exhibit A, E. L. O., June 12th, 1875.)

I also paid the bill for health dues, in the port of Philadelphia, $10.

(Same offered in evidence, marked Exhibit B, E. L. O., June 12th, 1875.)

I also paid the bill now shown for towage from Sampson's dock to foot of Dickinson street to discharge the deck load. The amount of the bill is $10.

(Same offered in evidence, marked Exhibit C, E. L. O., June 12th, 1875.

At Dickinson's wharf we discharged the deck load of lumber; the vessel at that time was submerged up to her main rail, and was drawing about nineteen feet; the water at this place was deep; we had to have deep water in order to discharge. I paid the bill now shown me for protest fees amounting to $14.50.

(Same offered in evidence, marked Exhibit D, E. L. O., June 12th, 1875.)

I paid the bill now shown me for board of the crew ashore before they were paid off; they were paid off about the 11th of September, 1874, and we arrived there the 7th; this bill is $19.

(Same offered in evidence, marked Exhibit E, E. L. O., June 12th, 1875.)

The bill now shown me is for wharfage at a dock where I first went to discharge, and where there was not water enough, $2. I paid it.

57 (Same offered in evidence, marked "Exhibit F, E. L. O., June 12th, 1875.")

After discharging the deck load at Dickinson's wharf, we took the vessel to Richmond, in order to ground her in shallow water, and get the cargo out of the hold. I paid the bills now shown me for assistance in shoving her up into shallow water. One was $10, and the other $3.

(Same offered in evidence, marked "Exhibits G & H, E. L. O., June 12th, 1875.")

The bill now shown me, is for towage from Dickinson's wharf to Richmond; it amounts to $15. I paid it.

(Same offered in evidence, marked "Exhibit I, E. L. O., June 12th, 1875.")

The bills now shown me were for labor in clearing up the wreck. I paid them, they amount to $34.

(Same offered in evidence, marked "Exhibits K & L, E. L. O., June 12th, 1875.")

The bill now shown me, $327, I paid; the services were rendered and were necessary to save her, and get the vessel afloat.

(Same offered in evidence, marked "Exhibit M, E. L. O., June 12th, 1875.")

I paid the bills of the Pennsylvania R. R. Co. for wharfage, amounting to $12.

(Same offered in evidence, marked "Exhibit N, E. L. O., June 12th, 1875.")

The bill now shown me is for discharging the lumber. It amounts to $396.50; it was paid.

(Same offered in evidence, marked "Exhibit O, E. L. O., June 12th, 1875.")

58 The usual expense of discharging cargo of this kind in New York, was seventy cents a thousand. The wharfage on our vessel in New York is $4.25, I think. I paid the bill now shown me. It was towing from Donaldson's wharf down to the dry dock. It amounts to $5.

(Same offered in evidence, marked "Exhibit P. E. L. O. June 12th, 1875.")

The bill now shown me is for wharfage at the dry dock while seeking a place to discharge; it was paid. Amount of bill is $6.

(Same offered in evidence, marked "Exhibit Q. E. L. O. June 12th, 1875.")

We had a survey held on the vessel, &c., under order of the U. S. district court in Philadelphia, and I paid for those surveys $56.

(Survey produced and offered in evidence with bill. Same marked "Exhibits R 1, R 2, R 3, R 4. E. L. O. June 12th, 1875.")

I paid this bill for extending protest, $7.50.

(Same offered in evidence, marked "Exhibit S. E. L. O. June 12th, 1875.")

I paid this bill now shown me for wharfage, amounting to $45.

(Same offered in evidence, marked "Exhibit T. E. L. O. June 12th, 1875.")

The bill now shown me is for use of sheers in putting in a new mast and for wharfage while it was being done. It amounts to $19.50. I paid it.

(Same offered in evidence, marked "Exhibit U. E. L. O. June 12th, 1875.")

The bill now shown me is for carpeting in the cabin, destroyed by reason of the collision. it amounts to $62.59. I paid it.

59 (Same offered in evidence, marked "Exhibit 1. E. L. O. June 12th, 1875.")

The bill now shown me is for ship-chandlery; it was paid. This bill includes materials used by riggers in refitting the rigging of the foremast, jib-boom, bowsprit, and topmast. All of that was taken down. We had table knives and forks on board at the time of the collision. They were all rusted. The vessel was salted before the collision. After the collision we had her resalted, and used the salt charged for in this

bill. The port anchor was carried away by the collision. It was 1,750 pounds weight. We replaced it by another like the one carried away. We had crockery, etc., on board. We had a dozen wine-glasses on board; some of them were broken. All the articles mentioned in this ship-chandlery bill were purchased to replace articles lost by the collision, excepting the items: log-book, $2.50; brass swinging-lamp, $2, and twenty fathoms of manila rope, $12.61.

(Bill offered in evidence, marked "Exhibit 2. E. L. O. June 12th, 1875.")

The bill now shown me is for repairs to furniture. It amounts to $19. I paid it.

(Bill offered in evidence, marked "Exhibit 3. E. L. O. June 12th, 1875.")

The bill now shown me is for bureau veritas. It was for a reclassification. I paid it, $15.

(Same offered in evidence, marked "Exhibit 4. E. L. O. June 12th, 1875.")

The bill now shown me is for stove and repairs, $7.84; I paid it. We had a stove on board before, which was broken.

(Same offered in evidence, marked "Exhibit 5. E. L. O. June 12th, 1875.")

60 The bill now shown me is for repairs to the vessel, except the items: $3 for iron cases, and demijohns, 75 cents. The amount of the bill chargeable is $29.95.

(Same offered in evidence, marked "Exhibit 6. E. L. O. June 12th, 1875.")

The bill now shown me is new jib and repairs of sails; I paid it. It amounts to $164.03.

(Same offered in evidence, marked "Exhibit 7. E. L. O. June 12th, 1875.")

The bill for watching, $50, was for twenty-five nights' services. I paid it.

(Same offered in evidence, marked "Exhibit 8. E. L. O. June 12th, 1875.")

The bill now shown me is for refitting the vessel. I paid it; it is $220.88.

(Same offered in evidence, marked "Exhibit 9. E. L. O. June 12th, 1875.")

The bill now shown me is for labor in resalting vessel. I paid it, $17.

(Same offered in evidence, marked "Exhibit 10. E. L. O. June 12th, 1875.")

The bill now shown me, $6.50, is for storage and cartage on cabin furniture. I paid it.

(Same offered in evidence, marked "Exhibit 11. E. L. O. June 12th, 1875.")

The bill now shown me, $375.25, is for painting the vessel; I paid it. It was for painting of damages. The vessel was gilded in the stem, cabin, and cabs on cabin. These were gilded before the collision.

(Same offered in evidence, marked "Exhibit 12. E. L. O. June 12th, 1875.")

61 The bill now shown me is for oakum, $1.10, and a telegram fifty cents. I paid it.

(Same offered in evidence, marked "Exhibit 13. E. L. O. June 12th, 1875.")

I called a survey on the damaged sails, cordage, &c.; I estimated the

damage on the sails to be $176.78. I had an adjustment made up in this case; I paid the adjusters for their services $1.50.

(Bill for same offered in evidence, marked "Exhibit 14, E. L. O. June 12th, 1875.")

I bought a new mast for the vessel in New York, and freighted it to Philadelphia. I could not get a large enough one in Philadelphia. The mast was $450, and the freight was $60. Some cargo was damaged; I collected freight on all. When the vessel arrived in Philadelphia for the purpose of making a delivery, we had an agreement with the owners of the cargo.

(Agreement offered in evidence, marked "Exhibit 15. E. L. O. June 12th, 1875.")

The bill now shown me is the bill for ship-carpenter's repairs; it amounts to $6,981.01. The repairs were completed on the 10th day of November, 1874. I claim sixty-four days' demurrage, less nine days for completing voyage and discharging cargo. I was not present all the time the repairs were going on; my two mates were there. Our full crew was eight, all told. We were not able to live on board the vessel during the repairs. The additional expense of living ashore was fifty cents a day for each, or $94.50 for the whole time. After the 11th of September all the seamen and steward—five of the hands—were discharged. The wages and keep of the men after the 11th amounts to $451.50. I sailed the ship on shares; the provisions belonged to me; I had one month's provisions on board at the time of the collision; I estimated they were worth $100. I made a list of the articles
62 belonging to myself. I was put to expense in traveling from my place of residence to the ship on business connected with the vessel. The amount of the expense was $16.80. Besides the provisions, I had two charts worth five dollars, a rubber coat worth five dollars, and a mosquito bar worth four dollars; these were lost by reason of the collision. The vessel was cut half in two. She had been ashore once before this on Long Branch. It was in July. She was ashore six days. The wreckers got her off. This was on the same voyage of the collision on the way down, but we returned to New York and repaired and recoppered her new. This was about six weeks before the collision. After the repairs of the damages by the collision I held a survey. The schooner was not in as good condition as she was before the collision. Her starboard bow was strained and the butts in her ceiling were started. They could not repair this. I estimate that her depreciation in value was $5,500. The surveyors on her at this time were Captain George Gilchrist, Robert Marshall, and Mr. Cornish. To repair my vessel I had to discharge the lumber, and the lumber had to be stored. The expense of storing during the time of repairing would have been $1.25 a thousand; the expense of wharfage while reloading would have been about $30, and the expense of loading one dollar a thousand, and for discharging her seventy cents a thousand. It would have taken at least seventeen days for reloading and discharging. I thought that the deduction of $648 which we made from the freight, was advantageous to the vessel and owners of the cargo, and was a reasonable amount. The paper now shown me is the charter-party under which I was sailing.

(Same offered in evidence, marked Exhibit 16, E. L. O, June 12th, 1875.)

The cargo was submerged from the 6th of September until the 1st of October. The last was got out on the 1st of October. It was very muddy when it came out. The cargo was assorted; 130,000 feet

63 were boards. All the timber had been resawed, except fifty sticks, which was sawed. Some of the boards were stowed in the bow, and were damaged by the collision.

Adjourned to the 15th, at 2 p. m.

JUNE 15TH.—Pursuant to adjournment parties appear.

William H. Bickmore continues.

Cross-examination:

I was a 17-64th owner of the Allie Bickmore, and am still. She went to sea on the 8th day of March, 1865, on a voyage from New York to Savannah, and has never since been heard from.

Q. 1. Was she insured?

(Objected to as irrelevant; taken subject to objection.)

A. She was.

Q. 2. At what valuation, and in what companies?

(Objected to as irrelevant; taken subject to objection.)

A. I don't know how the policies read. She was insured in the Boston Marine and Atlantic of New York. We never insure for full value.

Q. 3. How was the Allie Bickmore got afloat after being ashore at Long Branch?

A. By the wreckers, by laying out hawsers, heaving on anchors, and discharging all the cargo. It took us five days, working when the tide was favorable; she was hauled over and through the sand. The wreckers had a steamer, which sometimes hauled on us as well as hauling on the anchors: the Coast Wrecking Company were the wreckers. I paid the money for building the Allie Bickmore myself; it was a contract; it did not include the outfit; the contract was $27,500, and we paid some extra for carpenter work; it was for alterations. The $27,500 only included the hull and spars; we did not have a contract for the sails and rigging. I have an account showing the cost of
64 the Allie Bickmore; I will furnish it. The lumber which was discharged at Philadelphia was delivered to the consignees, and they shipped it to New York through the canal.

Q. 4. In stating what you claim to be a fair rate of demurrage for the Allie Bickmore, do you not intend to state a rate for the vessel when ready for sea with her crew on board?

A. That is what I mean.

Q. 5. Did you receive a commission, allowance, or discount on any of these bills?

A. No, sir; not on any.

Q. 6. Who represented the owners in the arrangements for the repair of the Allie Bickmore after the collision?

A. Willard Hall and myself; I had full authority. After the Allie Bickmore was ashore on Long Branch there were no repairs put on her except to replace her copper, which was done by Hall & Cornish; the decks were also recaulked by them; she was taking on the ways. She ran ashore on Long Branch in a thick fog; she was bound out; we passed Sandy Hook eight o'clock at night, and we went ashore the next morning at eleven in a fog. It had been calm.

Redirect:

After coming off Long Branch we had a survey on her, and had her rate renewed; I personally examined her. I could not see that there was any difference after she came off Long Branch than before she

went on, except that some copper was off. The repairs she had on her restored her fully to the condition she was in before she went on Long Branch. I could not see that the vessel was strained at all; while she was lying on the sand the weather was moderate. Her cargo at that time was grain and groceries; she was bound to St. Mary's River. After the collision, George Cornish, of the firm of Hall & Cornish, one of the owners, also superintended the repairs; he was engaged all the time from the time she went on the dock until she was finished, a period of thirty-five or forty days. My two mates remained by the vessel all the time, and were working on her.

65 Q. 7. Give in detail the parts of the vessel which were not fully restored to their former condition by the repairs, and which constitute permanent damage?

A. The main roll and bulwarks were sprung off from the knight-heads forward so that they had to take tackling to haul it into place; also the water-way streak was open on deck; the butts of the ceilings were opened abreast of the fore rigging; this was all on the starboard side; the forward house was not repaired as good as it was before; it could not be; we only took the ends out; the balance of it was sprung aft about a foot, so that we had to put braces on it to brace it back; this is all.

Recross:

I never had coal on the Allie Bickmore; we had 337,000 feet of pitch pine on one trip; that included a deck load; it is from that, and my experience in that class of vessels, that I estimate her carrying capacity.

WM. H. BICKMORE.

Subscribed and sworn to, before me, this 15th day of June, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

JULY 9TH.—Pursuant to notice parties appear.

ROBERT MARSHALL, a witness produced, sworn, and examined on behalf of the libellants, says: I reside in Brooklyn, and am a shipmaster; have been since 1829 up to about a year ago; I am seventy years old. I have owned interest in vessels, and have had to do with building vessels. I went to Philadelphia to see the Allie Bickmore in October, 1874; her repairs were about finished at that time. I examined her then pretty thoroughly; on the starboard side several butts were open, and there was evidence of straining by the collision. I had heard of the collision.

Q. To what extent, in your judgment, was she depreciated in market value?

A. About forty-five hundred dollars; the strains that I saw were not able to be repaired, except by rebuilding; and the fact of a col-
66 lision leaving such evidences of straining affects a vessel's market value; the schooner appeared to be a first-class vessel, she was well got up; I am not interested in her.

ROBT MARSHALL.

Subscribed and sworn to, before me, July 9th, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

GEORGE W. GILCHRIST, a witness produced, sworn, and examined for libellants, says:

I reside at Great Neck, Long Island; am in business in New York; my business is ship-chandler and grocer. I have been a shipmaster from 1833 to 1865, and have been and am now owner in vessels. I have built in vessels; I have bought and sold vessels. I own one thirty-second in the Allie Bickmore. At the time of the collision I should judge she was about ten months old. I went to Philadelphia to inspect her; I surveyed her in company with Captain Marshall, in October, 1874. Her repairs at that time were all finished, except setting the foremast and some painting. I examined as to permanent damage, and found that the butts of ceiling on the starboard side were open, I should think a large quarter of an inch; this was opposite the place of collision. In other parts the butts were closed. The outside being coppered we could not see. The butts could not be fixed without tearing out the planks, which would be very expensive. The indications of such strain on a vessel affect her market value.

Q. 1. To what extent in your judgment was the Allie Bickmore affected in market value?

A. I should think forty-five hundred dollars. The Allie Bickmore was a first class vessel, costing $39,000 which included coppering. I know of her having been on the beach at Long Branch; I examined her after she came off, while she was on the dry dock; there was no damage except taking off the copper on the starboard side; there was no strain on her; this must have been about two months before the
67 collision; she was thoroughly re-coppered at that time. I built in the Allie Bickmore.

GEO. W. GILCHRIST.

Subscribed and sworn to, before me, July 9th, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

Reference adjourned to 13th, at 12 m.

JULY 13TH.—Pursuant to adjournment, parties appear; reference proceeds.

GEORGE CORNISH, a witness produced, sworn, and examined on behalf of the libellant, deposes and says:

I am a shipwright; I carry on my business at 256 South street, New York. I am a member of the firm of Hall & Cornish; we supplied a foremast for the Allie Bickmore. The paper now shown me is a bill for that foremast; that is the market price for the foremast. The freight charged in that bill was paid.

(Bill offered in evidence, and marked Exhibit 17. E. L. O. July 13, 1875.)

I went on to Philadelphia and superintended the repairs of the vessel as a shipwright. I left New York on the 2d of October, and left there on the 4th of November, I charged, I think, twenty-four working days; during that time I was overseeing the repairs. I have been a shipwright for thirty-four years. I have been an owner in vessels, and bought and sold in them. I charged $8.00 a day for my services, and paid my own expenses; that was a fair compensation. Captain Bickmore employed me to superintend the repairs. I own a 1-32d in the Allie Bickmore. The Allie Bickmore was first-class; she was about a year old, I think, at the time of the collision. I knew of her having

been on the shore at Long Branch; I did not see her after she came off until I was in Philadelphia. I was in Philadelphia until the repairs were finished. After the repairs I saw signs of permanent in-
68 jury; she showed strain; her butts on the opposite side were sprung open; her forward house was knocked aft, and that we could not get back again; the forward end was stove in, and the whole of it was canted aft; by building a new house, those injuries could have been repaired; to have repaired the started butts we should have had to take the planks off and rebuild her.

Q. 1. To what extent did the permanent damage affect her market value in your judgment?

A. I should say $5,000, because it was an injury which any expert going aboard the vessel could see. I did not inspect her sails. The Allie Bickmore cost nearly $100 a ton. She was built at Boston, Massachusetts.

ROBERT MARSHALL, recalled for cross-examination, says:

Captain Gilchrist went with me to Philadelphia; I understood that he owned a little of her. We talked together about the depreciation in the vessel's value; he told me what he thought was the depreciation.

Q. In fixing the sum to which you testify, did you estimate what was the value of the vessel in her then condition?

A. No, sir.

Q. Did you estimate what she would be worth free from the injury to which you have testified?

A. I believe we did not.

Q. How long since you have bought or sold a vessel in this market?

A. Some years—ten years; vessels were pretty high then.

Redirect:

I had not had any previous acquaintance with the Allie Bickmore. From my investigation after, I pronounced her a first-class vessel. I have known of transactions in vessels in this market where I have not been a party. I sold a vessel in England in January, 1874.

Q. Was what Captain Gilchrist told you as to the value the sole topic of the conversation?

69 A. Yes, sir.

ROBT MARSHALL.

Subscribed and sworn to before me, this 13th day of July, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

GEORGE W. GILCHRIST, called for cross-examination, says:

I did not see the Allie Bickmore while she was on the beach at Long Branch. I know how it was said she went ashore; she remained on the beach about a week, as near as I can remember; she had some trifling cargo in when she went ashore. They were two or three days hauling on her after they got their anchors set. I only know from inquiry. Captain Bickmore would know better than I.

GEO. W. GILCHRIST.

Subscribed and sworn to before me this 13th day of July, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

GEORGE CORNISH recalled for cross-examination:

Q. Were you present when the witnesses, Gilchrist and Marshall, visited the Allie Bickmore at Philadelphia?

A. Yes, sir.

GEORGE CORNISH.

Subscribed and sworn to before me, this 13th day of July, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

Reference adjourned to the 20th, at 12 m.

JULY 20TH.—Pursuant to adjournment parties appear.

ELIJAH A. HOUGHTON, a witness produced, sworn, and examined on behalf of the libellants, says:

I am a shipping merchant in New York; firm of Miller & Houghton; place of business, 32 South street. I have been in the shipping business more than twenty years. I *I* am an owner in vessels. I
70 buy and sell on my account and for others. I am acquainted with the market value of vessels. I did not know the schooner Allie Bickmore. I never saw her to my knowledge. The fact of a vessel being in collision with another affects her market value.

Q. In the case of a vessel 390 tons register one year old, costing $39,000 when new, built in Boston, a three-masted schooner, which after being in collision with a steamer which struck her on her port bow, cutting in to her foremast and through the load of lumber in her hold, after repairs had been made which left evidences of straining by open butts on the starboard bow, and left her forward house canted aft, would such evidences affect her market value?

A. Yes.

Q. To what extent?

A. I could not give an idea of that without having seen the vessel.

Q. What would be the general effect on her market value?

A. It would deteriorate her market value considerably; not less than ten per cent. of her value; possibly more; there is not as good a market for a vessel that has been in collision as for one that has not.

Cross-examined:

Q. Do you mean to be understood that the mere fact of a collision deteriorates the value of a vessel?

A. For a serious collision, yes.

Q. Even though the damage be completely repaired?

A. Yes; and the minimum of such deterioration is ten per cent.

Q. Which deteriorates the value of a vessel most in your judgment, a collision or her going ashore on the Jersey coast, assuming the injury to be equally serious?

A. I should think there would be no difference.

Q. Can you specify any case of the sale of a vessel which had been in collision where the damage had been completely repaired?

A. No; I don't remember any.

71 Q. Is, then, your testimony predicated upon your own conjecture in the case of a vessel injured by collision where the damage had been completely repaired?

A. I can't state a case of the kind now, yet it is not a conjecture.

E. A. HOUGHTON.

Subscribed and sworn to before me this 20th day of July, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

MARCUS HUNTER, a witness sworn on behalf of libellants, says:

I am a ship-broker and ship-owner, carrying on business at 42 Smith street, firm Marcus Hunter & Co.; have been ship-broker since 1834. I am acquainted with the market value of vessels in New York. The general effect on the market value by reason of a serious collision is to depreciate the vessel's value and makes it more difficult to find a purchaser; signs of a collision effect the value; there are some scars that can never be got out of her.

Q. Take the case of a three-masted schooner 390 tons register and 650 tons carrying capacity, costing $39,000 and one year old, and which after being in collision with a steamer which struck her on her port bow, cutting her in to her foremast, was repaired, and when such repairs were completed left evidences of the collision, such as open butts on the starboard bow, and her forward house canted aft, how, in your judgment, would her market value be affected by such evidences?

A. Where these defects visible after repairs?

Q. Counsel reads testimony of Capt. Bickmore on the subject, and also that of Mr. Cornish.

A. It would be a very difficult thing to sell such a vessel without a man got a very good bargain.

Q. Could you estimate to what extent her market value would be affected?

A. I should think a vessel of that valuation, it would be $5,000 or $6,000.

Cross-examined:

72 Q. Is this estimate of yours based upon any knowledge of the actual result of any such cases as were put to you?

A. Yes, sir.

Q. Do you mean that you ever knew of a sale of a vessel in the condition which has been described?

A. Not a sale, because we could not sell her.

Q. Do you put your estimate upon the mere fact of a collision, or upon the fact of the evidence, which you supposed to have remained visible of unrepaired damage?

A. From the fact of unrepaired damage.

Q. In your judgment, would a vessel left after a collision in the condition mentioned in your direct examination be able to obtain an A classification or rate?

(Objected to as incompetent; objection overruled; exception.)

A. I should think she might.

Q. Is not the rate or classification of a vessel a very material consideration in respect to her salable value?

A. Yes, sir.

Q. In giving your estimate did you assume anything with reference to the rate or classification of the Allie Bickmore after the collision?

A. No, sir.

Q. Do you not think it is a material circumstance to take into consideration?

A. No, sir; I do not.

Q. Do you mean to be understood that in your judgment there would be an equal depreciation in value, whether after the collision the Allie Bickmore rated the same as before or at a lower rate?

A. No.

Q. Before your examination were statements made to you about the condition in which the Allie Bickmore was alleged to be after the repairs were made?

A. Yes, sir; by Mr. Black and Mr. Loud, one of the owners.

Redirect:

73 Q. We obtain insurance on vessels after a serious collision and repairs, and a vessel receives her old rating—do you know whether she retains that rating for as long as a vessel that has not been in collision?

A. I cannot answer that question of my own knowledge.

MARCUS HUNTER.

Subscribed and sworn to before me, this 20th day of July, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

Reference adjourned to 28th, at 2 p. m.

JULY 28TH.—Pursuant to adjournment, parties appear; also appear Mr. Birely and Mr. Clunn, of Philadelphia, witnesses. Reference adjourned conditionally to the 4th of August, at 1 p. m.

JULY 30TH.—By consent of parties, reference adjourned to September 7th and 8th, at 1 p. m.

SEPTEMBER 7TH.—Pursuant to adjournment, parties appear. Adjourned to 8th, at 1 p. m.

SEPTEMBER 8TH.—Pursuant to adjournment, parties appear. Reference proceeds:

DAVID S. CLUNN, a witness produced, sworn, and examined on behalf of libellants, says:

I reside in Philadelphia, and am book-keeper for Birely, Hillman & Streaker, ship-builders; have been with them eleven years; their office is 1441 Beach street, and their yard is on the Delaware River, at the foot of Warren street. I keep the time and make the entries on the day-book as they are handed me by the foreman. I seldom keep an account of the materials. I recollect the schooner Allie Bickmore being at our yard in October and November, 1874; she was being repaired. I saw

74 the repairs going on. The bill now shown me is a copy of the bill for those repairs; it is my handwriting and is taken from our books. The rates of charges were the usual rates; they were current rates. The original bill was rendered to the owners of the schooner as soon as the work was done. The work commenced about September 30th, 1874, and was finished about November 3d, 1874. I saw the character of the repairs, but it was not part of my business, I am not a ship-builder. I have seen a great deal of ship-building going on while I have been in that yard, for twenty-five years. The vessel was principally repaired on the bow on the port side. (Bill offered in evidence withdrawn.) The reports were made to me in writing in small books; the books now shown me are such books. William Bowen was foreman of one of the gangs at work on the vessel at the time; he is not in our employ now; he is in Philadelphia, I think; he is a shipwright. The book now shown me is the one kept by him. The entries I took off and entered in the day-book or blotter, and from that I prepared the bill. Book marked "1, E. L. O., for identification, September 8th, 1875." This book purports to contain a part of the material. Charles Howell was foreman of another gang at work on the vessel. The book now shown me is the book kept by him. From it I made

the entries in the day-book which are copied in the bill. He is now in our employ. Book marked "2, E. L. O., for identification, September 8th, 1875." This book purports to contain material. The book now shown me is kept by Mr. Birely. It purports to contain material. Book marked "3, E. L. O., for identification, September 8, 1875." The entries in this book were entered by me on the day-book and copied into the bill. The blacksmith made his return on a slate; the entries on the slate were erased as soon as they were entered on the blotter. Thomas Rylan was the blacksmith; he is in our employ now. Copy bill of Birely, Hillman & Streaker, marked for identification, "4, E. L. O., September 8th, 1875." I have been over this bill and marked with a check-mark in pencil on the margin the work done by the blacksmith. I kept the time-books of the men doing work on the Allie Bickmore personally; went around each day four times a day among the men and saw that they were there. I made the entries of material in
75 the day-book, taking them from the books already referred to. The entries in the time-book were made by me and copied by me into the blotter at the end of each week, and from there into the bill. I saw the men doing the work and marked them down in the book. The time is correctly charged in the bill; the prices charged were the ruling prices at that time. Time-books offered in evidence, marked "Exhibit A & B, E. L. O., September 8th, 1875." The sawyer rendered his account on the slate the same as the blacksmith, and the entries were by me copied into the blotter and then erased from the slate. The sawyer's name was Charles W. Slemer.

Cross-examination:

Q. 1. Have you any personal knowledge of the rates for labor in other establishments during the period covered by the bill?

A. In Philadelphia, no; I don't remember of seeing the bill of any other establishment.

Q. 2. Is it the fact that the entries in these small time and material books, so called, are transcribed into the book, the entries in which you say are copied into the bill?

(Objected to on the ground that it appears on the face of the instrument whether they are transcribed; overruled.)

A. They are transcribed by making a summary of them at the particular dates entered in the books.

Q. 3. Has this bill been paid?

(Objected to as immaterial; overruled; exception.)

A. It has not been entirely paid.

Q. 4. Has payment of it been resisted?

(Same objection and ruling.)

A. Yes, sir.

76 Q. 5. By the owners of the Allie Bickmore?

(Same objection and ruling.)

A. Yes.

Q. 6. Upon what ground?

(Same objection and ruling.)

A. That the bill was too large for the work done.

DAVID S. CLUNN.

Subscribed and sworn to before me, this 8th day of September, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

JACOB BIRELY, a witness produced, sworn, and examined on behalf of libellants:

I reside in Philadelphia; my business is ship-builder; have been about thirty-three years carrying it on in Philadelphia; my firm is Birely, Hillman & Streaker. I recollect doing repairs on the Allie Bickmore in October and November, 1874; Capt. Bickmore employed us; the work was done at our yard. We repaired her port bow, which had been completely stove, carrying away beams, knees, fore and aft pieces, windlass, midships-house, forecastle, foremast-deck, timbers, wales, and frames within about four and a half feet of the keel. We retimbered her, planked her, put on the wales, bulwarks, beams, fore and aft pieces, knees, deck, forecastle, windlass, rails, and bow chocks. The midship-house was partly taken down, repaired, and set on to its place, and replanked and rekneed. We did not put in the new mast. The work was done under my personal supervision; I was present pretty much all the time; I saw the labor that was performed and the material used. The work principally was forward; there was some little work around the rudder. We caulked the new part that was put in. We shored up and rebolted the starboard side; the collision had twisted it around; some of the butts on that side were started;
77 we got those butts partly up; we got them back far enough to make them secure; they were not closed exactly, but were secured sufficiently by caulking; they could have been completely closed by taking the whole thing out; that would have added $1,000 to the expense. We got the midship-house back to its place, and replanked the ends; the sides did not need it; the sides of the house were slewed, but putting it back to its place brought them back again. After these repairs you could not see that anything had happened to the house; nothing was left out of place. The work was commenced about October 3, 1874, and was finished in November, sometime. There was a gang inside and a gang outside; some days, I suppose, there were fifty men on her. I am familiar with the prices paid for labor and material in Philadelphia; the prices in the bill are the regular market prices.

Q. Do you know whether the work charged for in that bill was done upon the vessel?

(Objected to as leading and incompetent; withdrawn.)

I kept a memorandum of some of the material that went on the vessel. I now produce the memorandum.

(Same offered in evidence, marked "Exhibit C, E. L. O., Sept. 8, 1875"—it is included in the page marked in book "No. 3" for identification.)

I saw a portion of the other material which was used. I have heard Mr. Clunn's testimony; the prices charged in the bill for the articles entered in that book are the reasonable market values. The charges in the bill are the customary charges, and are the market value of labor and material in the port of Philadelphia. I went down in the hold of the vessel during the repairs; did no repairs to the ceiling on the starboard side except to put in one pointer; took out no planks in the hold or outside on the starboard side. I saw the Bickmore's condition on the starboard side; the way to repair started butts properly is to
78 take out the old material and put in new, if they are started so badly that they cannot be made seaworthy. In case they can be made seaworthy, we made them so by refastening and recaulking; if they are only started enough to see that they are started refastening and recaulking is better than taking them out and putting in new. Butts opened a quarter of an inch we should consider seaworthy by

being caulked. We generally cut them in a new vessel a quarter of an inch, and then caulk them. Where a butt is started by straining, caulking and refastening it I consider as good as putting in new plank. Did not caulk any of the starboard side.

Cross-examination:

Q. Did your employment come from Capt. Bickmore alone, or did either other owner act with him?

A. Mr. Hall and Capt. Bickmore came to the yard; Mr. Cornish superintended the job.

Q. Was your employment to do specific work, or generally to put the vessel in complete repair?

A. To put her in complete repair?

Q. Did he say anything to you to the effect that he expected to make the owners of the steamer pay the bill, and he meant to have a good job?

A. No, sir.

Q. Did he tell you that he wished a good job?

(Objected to; overruled; exception.)

A. Yes, sir.

Q. Did he not say to you that he expected the steamer's people to pay the bill?

A. Not to my recollection.

Q. Did he inform you that the schooner had been ashore shortly previous?

(Same objection and ruling.)

A. No, sir.

Q. Did you find it out?

(Objected to as hearsay and immaterial; overruled; exception.)

79 A. I think I did from conversation with the mate.

Q. Did the captain tell you that the repairs he wished made were due to the collision?

(Same objection and ruling.)

A. Yes, sir.

Q. Did you make all the repairs that were requested?

A. Yes, sir.

Q. After your work was done how did it compare with the condition of the vessel before her injury?

(Objected to as incompetent; overruled; exception.)

A. I think it was superior to the starboard side; she was stronger on the side repaired than before any injury was done; the new work was better than the original work, and the vessel was a stronger vessel.

Q. Were you asked for an estimate for putting the vessel in complete repair at any time?

A. No, sir; but we were asked as to about what it would cost; we were not requested to *to* do the work by contract.

Q. State why, after your work was done, you considered the vessel stronger or better than before the injury.

A. In the first place we took out short timbers in the bow and put in longer ones; put our fastenings all the way through; it made the job more costly. In examining her I found no work slurred or covered up except the fastening; a great deal of that I found shorter than it should have been; some of the bolts were only from ten to twelve inches long, which should have been twenty inches long, the effect of which was to make the vessel weak.

Redirect:

Q. It made it weaker by not passing through the timber and not being driven properly. I did not examine any other part of the vessel but the part we repaired; we repaired her in the way we usually repair vessels; there was nothing particular or extraordinary about the
80 repairs. The captain said he wanted a good job made of it, everything taken out from butt to butt, and the vessel made as good as she was before, and better if he could get it. The deck all came up from the fore-side of the fore-hatch to the bow; the started butts were on the plank-sheer water-way rail and knight-head; did not take them out, because they did not order them out; I don't think it would have made a better job. When I was asked what it would cost I told him that we would do the job by the day for him, in a proper manner, and make it cost as little as possible.

Q. Was the work done under those terms?

(Objected to as leading; sustained; exception.)

The captain did not give me specific instructions to put the bolts through the timbers; it was necessary in my judgment, and was ordered by Mr. Cornish; the use of the long timbers was necessary. I think the opening in the side of the vessel when she came to the yard was from ten to twelve feet at the rail, everything carried completely away and tapered down; the deck planks were torn up and carried away as far as amidships; the butts on the opposite side were started, and had to come out and be renewed.

Recross:

Q. Was the use of the long bolts and long timber any more necessary in repairing than in building the vessel?

A. Our practice in Philadelphia is to put them in as long as we can get them from the keel to the top of the rail; same in building as in repairing.

Redirect:

We put in some twenty-one or twenty-two new timbers.

Recross:

The angle of the cut was about forty-five degrees with the keel.

JACOB BIRELY.

Subscribed and sworn to before me, September 8th, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

81 Reference adjourned to the 14th, at 1 p. m.

SEPT. 14TH.—Pursuant to adjournment parties appear, and Smith, witness, attending. Reference adjourned by request of claimants to 18th at 12 m.

SEPT. 18TH.—Pursuant to adjournment parties appear. At request of claimants adjourned to 20th at 12 m.

SEPTEMBER 20TH.—Pursuant to adjournment parties appear. Reference proceeds.

WILLIAM B. SMITH, a witness produced, sworn, and examined on behalf the libellant, says:

I reside in Jersey City; I am a lumber inspector; have been about eighteen years. In October, 1874, I went to Philadelphia to see the

cargo of lumber by the schooner Allie Bickmore; I went at the request of the St. Mary's River Lumber Company. I saw the lumber; it was yellow pine timber and flooring; it had all been resawed. The flooring was covered with sand, and was water-soaked; so also was the timber; it was dirty and covered with slime from having been under water. Salt water darkens the lumber and affects the sap and market value. I have estimated the values of three or four damaged cargoes; and in my business am in the habit of estimating value of lumber; I estimated the damage in this particular case; the damage was about four dollars per thousand on the flooring, and about two dollars per thousand on the timber. The sizes of the timber was from one and a half inches up to twelve inches thick; they were special sizes. The effect of sand upon timber precludes it from being planed without being first washed off and dried. I formed my judgment of the damage from the general appearance of the timber and the sand upon the flooring; I cannot recollect what the market rates were at the time, but I think from $30 to $32 per thousand; my expenses, $25, of this inspection was paid by the Boston Marine Insurance Company. I saw the shipping of this lumber going on in Philadelphia on canal boats. I
82 surveyed it in Jersey City; it was between October 12th and 26th; the paper now shown me is the report of the survey; I surveyed October 12th the cargo on the canal-boat Stout, containing 101,165 feet; on October 17th I surveyed the cargo on the canal-boat C. Downer, 102,405 feet; on October 23d the canal-boat Setter, 99,641 feet; October 26th canal-boat Delaware, 17,409 feet; the gross number of feet surveyed was 320,620; I allowed 5,000 additional feet for freight measure; this is for the ends which have to be cut off, and which the captain cut off; the 5,000 feet is for lumber we do not measure, as not being up to inspection, but which we measure for the captain; this allowance was only upon a small portion of the cargo which was not sawed square, which we call flitch timber; the gross cargo was 325,620 feet. There was 110,000 feet of flooring; the balance of the inspection was the timber and flitch timber, of which 28,000 was flitch timber; the damage on the flitch timber is the same as on the square timber.

Cross-examined:

My business does not involve anything to do with buying or selling the timber, so far as concerns the price. I am not sure that at the time I made this inspection I knew what the price of that special cargo was; I knew what the kind of lumber was worth. I did not make an inspection at Philadelphia; I found it in two different places, but I don't remember the names of the streets. Salt water communicates a slime to lumber; I mean such water as there is in the East and North River; I can't say as to ocean water. When I saw the lumber in Philadelphia it was piled on top of each other; it was not piled regularly, that is, open so as to dry. I examined all I could see; I could see the ends of the sticks, and all that was exposed; it was piled up irregularly, so that parts of it could be seen; when it came to Jersey City I saw the whole of it; it was at the Central Railroad depot. In measuring it we reduce it all to inch measure; I measured every piece, length, breadth, and thickness, and then reduced the whole to twelve inches wide and one inch thick; this makes a very elaborate calculation. We
83 mark off, cull, as we call it, all that is split or broken, and all that is sappy enough to be injured; sometimes we throw out a whole stick. In measuring the flitch timber we throw off the wane in

measuring; the wane is the round part of the stick outside of the saw-carf, or square cut which would be left when it is cut. We also allow for rot, for rotten knots, and worm holes, but for all of these it is usual to pay freight, and to include in the freight measurement. I could not say how long it would take to stain yellow pine from salt water; can't say whether it would stain in a month. The resawed timber was deepened in color; it had lost its merchantable golden color; 110,000 feet of this lumber was intended to be planed, tongued, and grooved; the moment it is planed the bright color is restored, but the trouble is to get a mill that will do it.

Redirect:

There were no deductions made for rots, rotten knots and worm-holes, or anything else except the flitch timber; I gave the fullest measure for the cargo. The 325,620 feet was the entire cargo delivered by those canal-boats. Mr. Ross told me where to go to find the cargo in Philadelphia, and Captain Martin, of the Allie Bickmore, pointed it out.

WILLIAM D. SMITH.

JOHN J. ROSS, Jr., a witness produced, sworn, and examined on behalf of libellant, says:

I reside in Newark, New Jersey; I am the general manager of the St. Mary's River Lumber Company; this company was dealer in yellow pine; they were the charterers of the Allie Bickmore, and loaded her at Woodstock Mills, Florida. I was notified that the vessel had been damaged by collision with the steamer New Orleans, and was informed that the cargo was at Philadelphia, and to make arrangements to bring it on. I went to Philadelphia, and saw part at Read street wharf, a part on the wharf at Richmond, where they were discharging the vessel. I made arrangements for transporting the cargo with Easton & McMahon; the care of the lumber was at expense of the vessel and ourselves; we paid $117 for storage expenses at Philadelphia.

84 Reference adjourned to the 29th at 12 m.

SEPTEMBER 29TH.—Pursuant to adjournment parties appear. Reference adjourned to October 2d at 11 a. m.

OCTOBER 2D.—Pursuant to adjournment parties appear. Reference proceeds.

JOHN J. ROSS continues on his direct examination:

We paid Easton & McMahon $1,090.09 for the trasportation of this cargo. We sent men to Philadelphia to assist in discharging and caring for the timber; their expenses amounted to $56.50; this included wages and travelling expenses. We paid the vessel $2,732 freight, under the agreement in evidence. The measurers down there are Donald McKay and William S. Van Court.

Cross-examination:

This lumber was all sold to Morris & Cummings Dredging Company, Duane street; they bought 88,670 feet; William H. Hazard, Pacific street, Brooklyn, 55,568 feet; Morris & Cummings again, 44,073 feet, and again 17,409 feet; William H. Hazard, 10,434 feet, again 99,641 feet; P. Sanford & Co., Jersey City, 3,301 feet. These sales were made upon the receipt of the lumber. All that Hazard bought was cut upon

an order, and some of Morris & Cummings'. I was the agent in Jersey City of the consignors. If the cargo had arrived without injury we should have called it a prime lot of yellow pine; prime means with a large proportion of heart to the sticks, and with little sap; if the corners are sappy we call it merchantable, which is the next lowest grade.

JNO. J. ROSS, JR.

Reference adjourned to the 7th at 3 p. m.

OCTOBER 7TH.—Pursuant to adjournment parties appear. Adjourned to January 21st, 1876.

JANUARY 21ST, 1876.—Pursuant to adjournment parties appear. Reference proceeds.

CHARLES W. HOWELL, a witness produced and sworn for libellant, says:

85 I resided at 725 Moyer street, Philadelphia, in 1874; I was employed by Birely, H. & S., as foreman of a gang of shipwrights on the repairs of the Allie Bickmore. I took the shape of the timbers, and saw that the men worked it and put it in proper place. I was foreman of the outside gang. I did not keep the time of the men; Mr. P. Clunn attended to that. As I took the shape of the timbers I measured its length, breadth, and thickness, and placed it in the book. I produce the book I wrote it in.

(Book bearing mark "2, E. L. O., for identification, September 8, 1875," offered in evidence, marked "Exhibit A, January 21st, 1876." It is agreed that a copy shall be annexed.)

Cross-examined:

I was in the general employ, and am still of Birely, H. & S. The dimensions in my book are of length in feet, and of width and thickness in inches, the second column being width and the third thickness; the hackmatack knees are put down so many of a thickness, without reference to other dimensions.

CHAS. W. HOWELL.

Subject to correction by claimants if they desire, they admit that the following witnesses will verify the books kept by them to the same effect as the witness Howell; and that they be considered as having done so, copies of their entries, so far as in existence, be used instead of the originals, if they can be produced: William Bowen, Thomas Ryland, Charles W. Slemmer.

Reference adjourned to the 7th of March, at 1 p. m.

MARCH 7TH.—Pursuant to adjournment parties appear. Reference adjourned to the 9th, at 1 p. m.

MARCH 9TH.—Pursuant to adjournment parties appear. Reference adjourned to the 11th, at 1 p. m.

86 MARCH 11TH.—Pursuant to adjournment parties appear. Reference adjourned to the 18th, at 10 a. m.

MARCH 18TH, 1876.—Pursuant to adjournment parties appear.

Complainants' testimony.

GEORGE H. STETSON, being sworn for claimants, says:

I am the manager of the New York office of the Boston Marine Insurance Company; have held the position over two years; I remember hearing about the collision between the Allie Bickmore and New Orleans, on September 6th, 1874.

Q. 2. Had your company a policy on the cargo of timber?

(Objected to as immaterial and irrelevant; taken subject to objection.)

A. We had.

Q. To whom was that policy issued?

(Same objection, and policy will show; taken subject to objection.)

A. The St. Mary's River Lumber Company, represented by John J. Ross, jr., general manager; I think I had to do with the treasurer and somebody else.

Q. After the collision did they make claim upon you?

(Objected to; taken subject to objection.)

A. Yes, sir; they did.

Q. Did you then put yourself in communication with the owners of the Allie Bickmore?

(Same objection; taken subject to objection.)

A. I did; I had interviews with H. W. Loud & Company, the agents of the vessel.

87 Q. Was the result that persons were selected to estimate on the damage to the lumber? If so, state what took place on that subject.

(Objected to as immaterial; taken subject to objection.)

A. The vessel had a right to hold the cargo for a certain length of time, until she could repair and proceed on her voyage with the lumber; the owners of the cargo had agreed to deliver the lumber at a certain time, and were very desirous to get the cargo as soon as they could; the point we wanted to come at, to get the lumber here as soon as we could, and make an arrangement to that end with the underwriters and owners of vessel and cargo; I suggested, in order to facilitate a settlement, to have the lumber looked at to see what the damages were as it lay in Philadelphia, knowing the damages would be increased every day it lay there.

Q. Were persons sent to look at the lumber; if so, who were they?

A. Yes; William D. Smith, lumber inspector, of Jersey City; the first persons who looked at it were A. Benton & Brother, of Front street, below the navy-yard, Philadelphia; next, D. R. Garrison, of 943 Richmond street, Philadelphia; I believe that is all.

Q. Did these persons make a written report?

A. They did.

Q. Has your company paid their insurance upon the cargo of the Allie Bickmore?

(Objected to as immaterial.)

The question is asked for the purpose of showing that the parties in interest in the cargo claimed are the Boston Marine Insurance Company, and of showing their declarations and acts with reference to the amount of damages.

(Objected to as incompetent and irrelevant; overruled; exception.)

A. We have made a settlement and paid the compromise amount.

88 Q. Produce the reports of A. B. Benton & Brother and D. P. Garrison.

(Objected to; overruled; exception.)

A. I decline to produce them, under the advice of counsel for the libellants.

Q. Did you not, on or subsequent to November 11th, 1874, present to the claimants a statement of the damage and loss claimed to have been sustained by the cargo, in which the lumber totally lost was stated to amount to $147.36, and the damage to the residue to $500?

A. Yes, sir; as a compromise.

(Counsel for claimants objects to the witness' addition "as a compromise," and moves to strike it out; motion granted.)

Q. Do you remember meeting Mr. Samuel H. Seaman, one of the claimants, after you had received your Benton & Brother and Garrison reports?

A. I remember having a talk with him on the subject, but I don't remember the occasion.

Q. Did you not tell Mr. Seaman that one surveyor had reported that the lumber was damaged a hundred dollars, and that the report of another was, there was no damage at all?

A. No, sir; my belief is that I did not; I mean to say that I don't believe I did, and have no recollection of it.

Cross-examined:

If I told him anything I told him one man said it was damaged $1 a thousand. Upon refreshing my recollection from a letter, I think probable I did say to Mr. Seaman what the last question on direct examination asks. I had several interviews with Mr. Seaman to try to get a peaceable settlement of the matters; I think there might have been more than one set of figures; my impression is that I presented a set prior to November 11th. The basis of my talk with Mr. Seaman was a peaceable settlement, of which he held out hopes, and under that state of things I was disposed to settle without being very precise in the figures.

89 Q. Do you recollect the date Mr. Smith went on to Philadelphia to examine the damaged cargo?

A. I do not recollect the date; he made a verbal report, which was afterwards reduced to writing.

Q. Had you received any report from Mr. Smith at the time you made that statement to Mr. Seaman of November 11?

A. I don't think I had.

Q. Had you made any settlement with the owners of the cargo at the time you made that statement?

A. Yes, sir; I had.

Q. Did you, in any interview with Mr. Seaman, fix upon any figures for a compromise or settlement of this claim?

A. No, sir, I did not; the figures I presented were the figures I was willing to settle upon at the time.

Q. The extent of your interest in the cargo was how much at the time?

A. 39-60ths was the interest that the insurance company had in this cargo. (Paper shown witness), he says this is the statement I showed to Mr. Seaman on Nov. 11, 1874.

(Paper marked "Exhibit A of this date, March 18, 1876.")

Q. Did that statement embrace your interest as insure's or the whole damage to the cargo?

A. Our interest as insurers.

Q. Did you afterwards receive that assignment from the lumber company?

A. I did.

(Paper marked "Exhibit B of this date, March 18, 1876.")

Redirect:

Q. When first was it talked between you and the lumber company, that you should acquire their entire claims as subsequently arranged by the assignment of December 23, 1874?

A. A few days previously.

90 Q. Do you not remember that before you presented to the claimants your claim of November 11, 1874, you had conversation with them about a settlement, and that in such conversation it was assumed that you had acquired, or would acquire the entire claim of the lumber company?

A. No, sir; I recollect there was nothing said about it.

Q. Had there not previously been a negotiation between you and the lumber company, looking to your acquiring their whole claim?

A. No, sir.

Q. Did you not, when you presented your claim of November 11, 1874, tell the claimants that if that was paid, it would be in full of the entire claim of the lumber company?

(Objected to as immaterial; overruled; exception.)

A. I might have offered to guarantee them against any further claim of the lumber company.

Q. When, and what amount did you pay the lumber company for the assignment of December 23, 1874?

(Objected to as immaterial; overruled; exception.)

A. I will make a statement of the amount.

Reference adjourned to the 24th, at 3½ p. m.

MARCH 24. Pursuant to adjournment, parties appear. Reference adjourned to April 1st, at 10 a. m.

APRIL 1ST. Pusuant to adjournment, parties appear. Reference proceeds.

Mr. Stetson, recalled, examined by claimants:

The amounts paid are as follows:

For telegrams to Philadelphia, I presume		$1 37
Surveys paid to Mr. Gerrich for Philadelphia surveyors	$25 00	
The surveyor Smith	25 00	
		50 00
91 For estimated proportion of general average expenses paid St. Mary's River Lumber Co		$294 77
Lumber actually lost and damaged, paid to St. Mary's River Lumber Co		647 36
The $647.37 is made up of damage from wet and dirt		500 00
238 f't deficiency of cargo, at $12		147 36

The $294.77 is the cargo's estimated proportion of the general average expenses agreed upon as due to the vessel.

Recross:

Q. Were these payments for the full damage, or the proportionate part insured by you?

A. For the proportionate part insured by me; and settled by me by way of compromise between me and assured.

GEO. H. STETSON.

Sworn to before me, this 1st day of April, 1876.

EDWARD L. OWEN,
U. S. Commissioner.

SAMUEL H. SEAMAN, being duly affirmed, says:

I am one of the claimants; I first heard of the collision September 7th, 1874; the day after the collision; that day Mr. Loud, the agent of the schooner, called upon me. I told Mr. Loud, either then or the next day, that we had heard nothing from our steamer except what was in the papers, and his despatch, which he showed me, and that we knew nothing more about the circumstances, or liability of our vessel, but that in any matter where there was a liability claimed or likely to be claimed, we wished to see the repairs made at the lowest possible cost, and mentioned to him that Pusey, Jones & Co., of Wilmington, Delaware, were parties who could do that work to advantage, and suggested that he telegraph to the captain to have him do it. That if they did the work we would not question their bill, in case we were liable.

92 He said he would immediately telegraph to the captain, that Pusey, Jones & Co., had our confidence, and would ask him to let them do the work. I saw Mr. Loud several times within the next few days, and there were conversations to the same effect. I saw the captain about a week later. I disclaimed liability; he said he would not adopt our suggestion, unless we would agree in writing to pay every possible expense, which we refused to do, on the ground that we didn't consider ourselves liable. I saw the captain after that, and there was conversation to the same effect, that if Pusey, Jones & Co., did the work, we would not object.

Q. Was anything said on the captain's part indicative of any purpose to have unnecessary repairs made, and if so, state it as near as you can, and the language used.

(Objected to as leading; overruled; exception.)

A. I can't call the precise language, he said he was going to have the vessel fitted up nice now, that he wanted everything made just as good as it could be, he was going to take the opportunity to put the vessel in complete order; he expected to have new carpets in her cabin, and everything fixed up nice. I don't recall the precise language; I told him that in case of our being liable we would only be liable for necessary work to repair the damage caused by the collision. The captain spoke about Pusey, Jones & Co., having called upon him, and of any quantity of people who had been after him to do the work. I think he said Pusey, Jones & Co., had given him an estimate, although I am not positive. I think the captain spoke about having been in communication with Jackson & Sharp Company, but I am not positive of that. Prior to my interview with captain, Jackson & Sharp had communicated with us of their own accord. Jackson & Sharp are extensive ship builders in Wilmington, principally building schooners and smallish vessels.

Q. What was the reputation of Jackson & Sharp?

(Objected to; overruled; exception.)

93 A. It is first-class.

Q. Who were Pusey, Jones & Co.? What knowledge had you of them, and what was their reputation?

(Objected to; overruled; exception.)

A. They are builders of iron and wooden steamers and sailing-vessels in Wilmington, Delaware, on a large scale, with a first-class reputation. No house in the United States stands in better reputation than they do. They had been doing work for us some fifteen years, and may be more.

Q. Did Mr. Loud and the captain say whether or not they knew Pusey, Jones & Co., and what did they say about the quality of their work?

A. I remember now of Mr. Loud's speaking of the fact that he knew they built our steamers. The captain spoke familiarly of them. I don't remember his language, but neither of them objected to their work. There were a great many conversations between Mr. Loud and the captain and myself when this matter was discussed between the time of the collision and the commencement of the repairs. The captain always declined to accede to what we wanted him to do in regard to repairs without the written agreement.

Q. Did you then request Pusey, Jones & Co. to make an estimate of the expense of repairing the damages caused by the collision?

(Objected to; overruled; exception.)

A. We did, including every expense.

Cross-examined:

Been connected with the shipping business about twenty years; been an owner of vessels twelve years. We have had very few collisions in that time. I recall one case in which I made a claim for damages by collision. I did not prosecute that claim; it only amounted to $400.

94 I don't recall any case where we have prosecuted to recover for damages. I don't know which Mr. Loud I saw; it was the shortest one of the two. He was present at some of the interviews between myself and Captain Bickmore. The forepart of the time he was usually there. After that the captain came alone. Most of the interviews with the captain were before the libel was filed. I never saw the Allie Bickmore that I remember. On Monday or Tuesday I sent a carpenter from Mr. Poillon's. I think it was Mr. Allen. I afterwards sent Jeremiah Darling. He was to meet some parties, but he failed to meet them. My brother-in-law, Thomas J. Husband, jr., who lives in Philadelphia, also saw her. I wrote him to visit her the day I heard of the collision. Mr. Allen visited her that same week. Mr. Allen made a verbal report. Mr. Darling made a statement in writing. He went to see if she would be as good as she was before. I don't remember learning of the character or build of the schooner. They did not give me any idea that she was particularly an expensive or ordinary vessel. Mr. Darling went a week after or later. I don't now recall that I knew the precise time when the repairs commenced; I don't think I heard when it was completed. Captain Bickmore, I think, spoke of her as a good vessel. I think he or Mr. Loud told how old she was. I may have been informed what she cost to build, but I don't remember. I think he mentioned when she was built. I didn't know her builders by repute. I ascertained her tonnage by some reference or he told me. The conversation in which the letter was asked admitting our liability and agreeing to pay all possible expenses, I think, was the first time I saw him, and afterwards. The circumstances of the collision and the place where the fault was claimed to lie was discussed. We said, in the absence of any statement of our witnesses, we could not assume that the steamer was responsible. At that time we were in receipt of a letter from the captain of the New Orleans, stating some facts in connection with the collision.

Q. Did you have a statement from the captain of the New Orleans as to where the fault lay?

(Objected to.)

95 A. The statement of the captain of the New Orleans, as I remember it, was that the schooner was not at fault. The captain of the schooner did not mention any names of shipwrights or builders to us. We spoke of Jackson & Sharp, of Wilmington, and of Pusey, Jones & Co., of the same place. I don't remember that we mentioned the names of any ship-builders in Philadelphia or not. Jackson & Sharp had never done any work for us. I don't remember that we have had any work done at any ship-yards in Philadelphia. I knew the reputation of some ship-builders in Philadelphia, and I knew the names of some ship-builders in Philadelphia at this time. I remember knowing the name of Mr. Quin. I suppose he was in business then. I knew the name of one other, Mr. Cramp; he was also in business. They stood fair. Neither one of them we would choose to do work for us.

Q. Why did you particularly want this work at Wilmington done by Pusey, Jones & Co.?

A. Because we knew them—had confidence in their integrity and ability to do the work to good advantage, and supposed it would be less expensive than to do the work by any Philadelphia concern. We had had no experience of Philadelphia work.

Q. Did you in any manner agree to pay the bill if the work was done by Pusey, Jones & Co.?

A. No further than as I have stated. The language used by Captain Bickmore, as near as I can recollect, was that he intended to have the ship put in first-rate order every way—have new carpets and furniture, and everything fixed up nice. He gave me a description of the condition of the schooner—under water down to her decks. I supposed from that description that the carpets and furniture would be damaged.

Redirect:

Q. Do you know whether, in the opinion the captain of the New Orleans stated, that the schooner was not at fault, he relied for what took place on that vessel upon statements made by her captain?

A. He did; he said he did.

96 Q. On the trial were those statements proved by the schooner's witnesses to be incorrect?

(Objected to; exception.)

A. They were. Mr. Stetson said that if we would pay his claim that would settle the entire cargo.

Recross:

I can't recall day that statement was made. I don't remember suggesting to him to get power to settle the entire claim. He said if we would pay it that it would furnish the entire cargo claim, and he would get some paper clearing us from any claim. I understood that Mr. Stetson insured only a part of the cargo.

Q. Did you not understand his proposition was a compromise?

A. No; I understood that the payment by him was the full amount of the damage to the lumber.

SAMUEL H. SEAMAN.

Adjourned to Wednesday, April 12, at 1 p. m.

APRIL 12TH.—Pursuant to adjournment parties appear.
Reference adjourned to the 18th, at 2 p. m.

APRIL 18TH.—Pursuant to adjournment parties appear.
Reference adjourned to the 22d, at 1 p. m.

APRIL 22D.—Pursuant to adjournment parties appear.
Proctors for libellants notified claimants that they must close the case in twenty days under the rule.
Reference adjourned to the 25th, at 3½ p. m.

APRIL 25TH.—Pursuant to adjournment parties appear.
Reference.
Adjourned to 29th, at 10 a. m.

APRIL 29TH.—Pursuant to adjournment parties appear.
Counsel for claimant asks for an adjournment to May 6, at 1 p. m.
(Counsel for libellants objects, on the ground of the repeated adjournments had, and that no sufficient excuse is given for not going on.
97 Counsel for claimant states that the reason the adjournment is asked is on the ground of the inability to obtain witnesses who reside without the jurisdiction of the court. Adjournment granted on the condition that the claimants close their testimony at the next session.
Reference adjourned to May 6, at 1 p. m.

MAY 6TH.—Pursuant to adjournment parties appear. Reference proceeds.

CHARLES HEALD, sworn for claimants, says:

I reside at Wilmington, Delaware; I am a ship-carpenter; have been about twenty-six years. I am in the employ of Pusey, Jones & Co., of Wilmington; I am foreman of their ship-carpenters' department; have been in their employ over ten years; part of that time they have been extensively engaged in ship-building, repairing wooden vessels, but not building wooden vessels. Their yard is on the Christiana River, in Wilmington, three miles from where the river empties into the Delaware. Wilmington is about thirty miles below Philadelphia. In September, 1874, I visited Philadelphia for the purpose of seeing the schooner Allie Bickmore; on several occasions, at the request of Pusey, Jones & Co., I was directed to make an estimate of the damages done the schooner by a collision with the steamer New Orleans. I visited her the first time somewhere about the 9th or 10th of September. The first time I found her at a dock above Simpson & Neal's, where she first hauled in; she was just as she came in; she had not been touched at all. It was not possible to make an estimate in the condition in which she was. I saw the captain himself.

Q. What did you tell him?

(Objected to as immaterial and irrelevant; overruled; exception.)

A. I told him I was sent there by Pusey, Jones & Co. to make an estimate on the damages done the schooner by the collision with
98 the New Orleans. I told him the owners of the steamship New Orleans had written Pusey, Jones & Co. requesting them to make an estimate for the work. The captain wanted to know then if I had any letters from the steamship company authorizing me to hold a sur-

vey on the vessel to make an estimate. I told him I had not. This is about all that passed at the first time. What I said was by the direction of Pusey, Jones & Co.

(Motion to strike out, on the ground that it is irrelevant, denied; exception.)

Q. How long after that did you go up there the second time?

A. Three or four days. The vessel was then at Dickinson street wharf; she was still pretty much in the same condition; part of her lumber had been taken off; she was not in a condition to make a survey and estimate; could not see what the damages were. I don't think I saw the captain at that time. I did not stay more than a few moments. I went up the third time somewhere about a week after; she was then up in Kensington unloading—about unloaded. I could see then all the damage that had been done, and what was needed. I saw the captain that time as I was going on the boat, and he was passing out. I spoke to him, but he did not wait. I went again some two or three days after. I then found her out at the end of the wharf; she was discharged at that time. I then made a survey of what was necessary to repair the damage caused by the collision; it was a full and complete survey. I made the survey by measurement, and counting the number of pieces of frame and plank, and everything else that was needed of the same size as she had been built before, as near as I could get at it. I went into all parts of the vessel. I saw the injury which had been done in the cabin to the furniture, and everything. I might not have been in every room, but I think I was. I did not see the captain that time.

99 Q. What, previous to that time had been said by you to him as to any wish of Pusey, Jones & Co. to repair the vessel?

(Objected to as incompetent and irrelevant; overruled; exception.)

A. I told him that they had received a letter from New York to make an estimate on the work, and to see if they could not get the vessel down to Wilmington to do the work. I think that was the second time I saw the captain. I can't say exactly what he said to that, but he was not in favor of taking the vessel away from Philadelphia. I think I spoke to him about storing the lumber, for I was instructed before I left to tell him that we would store his lumber on our dock free of expense; I am satisfied I spoke to him about that. Very little was said between me and the captain; it was almost impossible to get anything out of him.

(Objected to.)

I made a report of my examination, and handed it to Mr. Gibbons, of Pusey, Jones & Co.

Q. On either occasion when you saw the captain, did he say anything to you about an offer to do the work received from any other party?

(Objected to as irrelevant, and on the ground that the attention of the captain has not been called to the matter when he was under examination; overruled; exception.)

A. He told me that he had received an estimate to do the work from Jackson & Sharp; he did not tell me how much it was; this is about all he said.

Q. If the work reported by you had been done, how would the vessel's condition compare with what it was prior to the injury?

(Objected to as incompetent, not a proper foundation; sustained; exception.)

100 Q. If the repairs reported by you had been made, how would the vessel's condition have compared with that of a new vessel? (Objected to as incompetent, and no proper foundation laid, and not as applying to this particular vessel; objection overruled; exception by proctors for libellant.)

A. With her—she was nearly a new vessel anyhow—she would have been as good as before the steamer struck her at all; the bow where she was hit would have been as good as the other one.

Cross-examined by Mr. BLACK:

Q. What did you consider the Allie Bickmore cost as a new vessel?

A. From thirty to thirty-five thousand dollars, I should suppose.

Q. And how old did you take her to be?

A. I knew her age from her captain; she was somewhere about nine months old.

Q. What repairs, if any, to houses on deck did your estimate include?

A. Repairs to the forward house; the forward end of the forward house was knocked in.

Q. Was it only the place that was knocked in that you made an estimate upon?

A. I made an estimate on it to repair it as good as it was before it was damaged. My estimate was to repair what was knocked in of the forward house, and we might have to take a little off the sides so as to repair. I did not estimate on a new house.

Q. Wasn't that house canted aft?

A. It was started aft a little, but it was not necessary to take it all down.

Q. Did your estimate embrace setting it up in its former place?

A. It did; that estimate embraced setting it up in its former place and making it as true and its joints as close as before the collision;

101 I believe the siding ran up and down. The canting of the house was on both sides; it was all started a little aft. There was very little of the sides of the house that had to come down; the main part of the repairs were in the forward end; the sides could be brought back to their former position without taking them down; the upper ends of the timber were started a little; at the ports they were racked a little; in my judgment they could have been made as good as new without taking them down and replacing them. We would take out all that was broke, and then set the house forward and refasten it; the house was something like ten by twelve or fourteen; it was a little wider; I think it was not longer. The top of the house was canted; the bottom was not canted at all; the house was built of narrow siding three to four inches wide; I could not see how it was framed; I went inside; I am not positive how it was lined. I estimated on the inside and outside of the house to do whatever was needed; did not know what was needed until it was set up. In canting back such a house each tongue of each board was moved in its groove some little; the house was decked over with a little moulding. I meant to shove the siding over bodily; it was not racked a great deal; the upright boards are nailed to the frame; the canting back would not break the nails; they would give in the wood. I should not think it would break off those nails; it might some. The house pushed back in place and the sides renailed would be as good as a new job if built of new stuff.

Q. How many times could a house of that kind be canted back, set up and renailed, and be as good as new each time?

A. I can't answer that question; I suppose a second injury would affect it a little, but it would not damage it to any great amount; I can't say as to a third rack; you may rack a thing until you rack it to pieces; you may push a table once and not hurt it, but you may keep pushing it several times until it is racked to pieces; the first racking had a little effect, but not any to hurt it; it would not be damaged to any amount whatever; I mean it would injure it a little. I saw
102 the vessel once out of water; I made the estimate on her before that; after seeing her out of water I did not change my estimate; part of the break was under water; I made an estimate of how many planks were broken from the keel; some of the broken planks were under water; I could see the planks from the inside; the vessel was broke clear through. I could tell within one the number of planks broken outside; I know the shape of the stem that ran into her; we built the New Orleans.

Q. Did you examine any part of the starboard bow?

A. I made no estimate on the starboard bow; there was no damage there that I could see; I looked all around the bow, outside and inside, but not below water-line. I think thirty strakes of plank were cut into by the collision; I don't recollect how many from the keel up. The cut extended nearly to the centre on deck, athwart ships, that is, half the width of the bow, and in nearly to the foremast; the foremast was damaged. I can't answer how many vessels damaged by collision we have repaired; not over two or three of any great amount of damage. It was a pretty severe blow; it would not be a heavy jar on the vessel, with the shape of the bow of the New Orleans; it would not injure the vessel except that part that was cut; I have never seen any other vessel struck by the New Orleans. I judged there would not be any great shock on account of the shape of the bow of the New Orleans. I know the New Orleans went into her until one or both stopped.

Q. Do you think a vessel of the size and momentum of the New Orleans could strike the Allie Bickmore, cutting into her as she did, loaded as she was, without any great shock?

A. I don't think she could, but I do say that she did not shock the vessel enough to injure her in any other place than where she cut into her.

Q. Would not that shock have a tendency to start her timber and planking throughout the vessel?

A. I think not; it would not start her fastenings or open her
103 butts; the ceilings were edge-bolted and then bolted to the frame, and the planking was bolted to the frame, not edge-bolted.

CHAS. H. HEALD.

WILLIAM G. GIBBONS, affirmed for claimants, says:

I am a member of the firm of Pusey, Jones & Co. I reside at Wilmington, Del., and with Mr. Heald have come here to give my testimony at the request of the claimants. I am not a practical ship-carpenter, but am engaged in the business of building iron vessels and repairing wooden vessels. I was trained to the business from youth, and have been extensively engaged in it. I have heard the testimony of Mr. Heald; I sent him to make a report of the injury to the Allie Bickmore; his orders were to thoroughly examine the damaged vessel, so far as the damage was concerned, and to report; he did report.

Q. Upon that did you make an estimate of what it would cost to repair the injury which the vessel had sustained?

A. Yes, sir.

Q. What was the fair and reasonable value of repairing all the damage?

(Objected to as incompetent, and as the mere estimate on the hearsay evidence of a third person; sustained; exception.)

Q. Have you the report made by Mr. Heald, and described in his testimony?

A. I have a letter-press copy.

Q. Look at the paper now handed you, and state whether that was the original.

A. It is.

(Same offered in evidence; objected to as incompetent and irrelevant; taken subject to objection. Marked "Exhibit A, E. L. O., May 6, 1876.")

104 Q. Did you make an estimate of the fair and reasonable value of the work and materials included in that report?

(Same objection; taken subject to objection.)

A. I did.

Q. What was the amount?

(Same objection and ruling.)

A. $4,300.

Q. Have you a copy of the estimate made by you?

A. I have; I will annex a copy.

(Same to be marked "Exhibit B, E. L. O., May 6th, 1876." Taken subject to objection.)

The item lay days, twelve days at $40, $480, means compensation to us for the use of our dock or railway; the item towing $100 includes the transfer and all the responsibility of bringing the vessel from Philadelphia; the towing charge would be $25 or $30; the item sundries $100 was intended to cover knees that might be needed to strengthen the house or deck, and any little items that may have slipped the survey. I never saw the captain about the matter. My firm made the captain an offer to repair the vessel. I have a copy of it. I produce a letter-press copy of it. I sent a copy of it to the captain by Mr. Heald. I think the captain afterwards acknowledged it. I tried to find the letter, but cannot.

(Copy offered in evidence; objected to; no competent proof that it has ever been received; taken subject to objection. Marked C, E. L. O., May 6th,) 1876.

I saw one of the owners of the Allie Bickmore. I think his name was Abiel Gove.

Q. Where was it?

A. First at our office in Wilmington, and, second, at the office of an United States commissioner at Philadelphia.

Q. What was going on at the time?

(Objected to as irrelevant; overruled and exception.)

105 A. Testimony was being taken in a suit by the ship-carpenters against the owners of the Allie Bickmore. I was summoned as a witness for the owners of the vessel. I was examined.

(Motion to strike all the answer except that testimony now being taken denied; exception.)

Q. Did Mr. Gove on that occasion say anything to you; and, if so, what, about the ship-carpenters' bill?

(Objected to as incompetent; overruled; exception.)

A. He stated to me that the ship-carpenters had overcharged him, particularly for the material used, in this, that they had practiced when a part of the plank was used to charge the whole of it, and when the further part was used charging for it again. That in the case of the nails and spikes, time for straightening and putting in order the old spikes and bolts, making them cost equally more than new ones. Generally his remarks were to convey to me that he had been gouged.

Cross-examined:

I estimated on one bow-chock; no separate warping-chock.

Q. (Counsel reading to witness from survey Exhibit R 4.) Do you in that survey perceive any matters not covered by your estimate?

(Objected to that Exhibit R 4 is only in evidence as a voucher and not as any proof of the matters stated in it.)

A. With the exception of personal clothing contained in cabin and charts, sundry small stores, a barrel of tar, and a half barrel of paint-oil, fifteen gallons pine-oil, nineteen pounds of paint and paint-brushes, six corn-brooms, five deck-buckets, and barrel of kerosene-oil, twelve pounds of tallow, saw, and ax.

Q. Do you find anything in your survey about cleaning up the cabin, repainting, and revarnishing, and polishing?

106 A. I find in the survey, repaint the schooner's bow and the forward house, recaulk the bow, and repair the furniture in the cabin.

Q. How many timbers were reported to you in the survey?

A. Twenty timbers.

Q. In the survey Exhibit R 4 there is mentioned twenty-two timbers, three pairs of hooks and pointers, two deck-beams—did you estimate on any deck-beams?

A. Our estimate was intended to cover all the injury—yes, two beams under the main-deck, one pointer, two hanging knees, and six horizontal knees. I wish to make this explanation that carpenters and ship-builders in different sections of the country call the same thing by different names.

Q. Was there anything in your survey about a cathead?

A. One cathead, sir.

Q. Anything about a jib-traveller?

A. Yes, sir; one jib-traveller.

Q. Anything about hawse-pipe?

A. I don't see anything about a hawse-pipe, or about a bell.

Q. In making your estimate was that survey your guide?

A. In the main, yes; but I used my own judgment as to little matters that I know would relate to the cost and that were not in detail expressed in the survey, and that I included in the estimate.

Q. Did you estimate on any greater number of timbers or knees than is expressed in your survey?

A. No, sir.

Q. Did you estimate on any greater amount of materials than is expressed in your survey?

A. No, sir; excepting in a few unimportant particulars.

Q. Did you estimate on any galvanized iron or spikes or bolts?

A. I don't remember.

107 (Witness states: I would like to look at the estimate. Counsel answers: I prefer you to testify from your recollection.)

Q. Which is the more expensive, galvanized or plain iron?

A. Galvanized—galvanized spikes have a value of three cents a pound more than plain.

Q. Did you estimate on the use of any yellow metal bolts?

A. I think not, sir; the vessel being coppered the spikes below the copper would have to be of necessity of brass. I think I did not estimate on any so-called yellow-metal bolts.

Q. What materials did you estimate for the ceilings?

A. My recollection is yellow pine.

Q. And what for the pointers?

A. I think of oak.

Q. Did you make any estimate on trenails?

A. Yes, sir.

Q. What kind of knees?

A. I think part oak and part hacmatac. I don't remember the size. In the survey there is nothing to indicate the size of the knees. They would vary. The average would be about eight inches. There is little difference in the cost of hacmatack and oak knees for this size—large oak knees are very costly.

Q. How did you calculate to fix the planking of the schooner?

A. Carry it to the butt where the broken plank ended; to make no more butts than there were originally.

Q. Did you estimate on side-bolting?

A. Yes.

Q. Is there anything about side-bolting in the survey?

A. Nothing expressed.

Q. Did you know that this schooner was edge-bolted?

A. Yes, sir; and, to explain, I catechised Mr. Heald about it.

108 Q. In making repairs of this kind, is it possible to edge-bolt without tearing away all the side of the schooner?

A. It would not be convenient to do it where the planks run in between others, and it can only be done where it is accessible to bore. The edge-bolting increases the cost of repairs. I do not know how close they were in this vessel, but I suppose one between each frame or alternate frame.

Q. Did you estimate on galvanized or plain chocks?

A. On plain iron chocks. I think there were two wood chocks, but I don't remember. To make the chocks match it would be necessary to cast them. The patterns are generally of a uniform standard. I don't know whether the chocks on the Bickmore were of the uniform standard.

Q. Did you estimate on the galvanized plates for catheads?

A. We estimate for plates to make catheads complete, but don't know whether galvanized or not. I estimated for largely, partially, resalting the vessel. More than half and totally around the place damaged.

Q. For a vessel submerged for a period of ten days, how much of the salt should be left in her frames?

A. The water would not make a current in the vessel if she was tight, excepting in the parts adjacent to the fracture. We should have put salt wherever it was found to be out. We did not estimate a thorough resalting.

Q. In a vessel submerged below her deck, would not the water get in between her ceiling and planking?

A. It would to some extent.

Q. Would it not wash out some of the salt?

A. The water that would get in would dissolve sufficient salt to reach the point of saturation, no more.

Q. Would not the towing of the vessel from the ocean up to Philadelphia by steam-power make a current through her?

A. Through the fractured parts, yes; other places, no.

Q. In your judgment the water in her interior would remain unchanged from the Atlantic to Philadelphia?

A. It would probably change while she was in rough water; in still water, but little. At Philadelphia the Delaware is fresh; the current is a two-knot current.

109 Q. Would not that current operate to change the water in the vessel?

A. No; it would not.

Q. You think there would be no circulation in the vessel?

A. I think not; she would soon become coated with mud inside; that would occur twice every twenty-four hours at the change of tide.

Q. Would not the fact of the fresh water at Philadelphia, taking up saline matter from vessel and changing its gravity in that way, make a circulation through the vessel?

A. No; for the reason that the partly saturated water is of greater gravity than the fresh water, and would sink down and remain in the compartment; the saturated water would not go into the bilge; if the deck was submerged, the water would get into salt through the ventilator holes in the deck, but the portion saturated will remain in contact with the salt. I made no estimate for refastening or recaulking any part of the vessel, except that adjacent to the fracture and the fracture.

Redirect:

Q. Can you name some sum which would cover all the differences in materials to which your attention has been called on cross-examination?

(Objected to on the ground that it presupposes that witness has been asked as to all differences; overruled; exception.)

A. In the neighborhood of $100, and to cover differences of that kind I allow a leeway in my estimate and added $100; the expense of taking to pieces and putting up the forward house would have been towards $75 to $80, and that would have covered any new material and painting; Mr. Gove told me he had had his own carpenter make an estimate of the damages; he did not state when; I don't remember the amount, but it was much under mine.

110 Recross:

In my estimate I included blacksmith work and sawing; sawing is included in the item of labor and blacksmith work. In the charge for iron per pound, scraping is included in the item of labor and washing the outside. I estimated on two coats of paint on house and on part renewed and adjacent. The submerging would injure the varnish in the cabin. The time submerged was insufficient to soak off paint, and I don't think it would damage it. The yellow-metal bolts would be drawn out and used over again and few wasted; the material galvanized was mostly above deck and the $100 would cover the galvanizing of bolts, &c. It would not include the galvanized chocks, but would include the catheads.

WM. G. GIBBONS.

Adjourned to 13th at 2 p. m.

MAY 13TH.—Pursuant to adjournment parties appear. Reference adjourned to 20th at 10 a. m.

MAY 20TH.—Pursuant to adjournment parties appear. Reference adjourned to 27th at 2 p. m.

MAY 27TH.—Pursuant to adjournment parties appear. Reference adjourned to June 3d at 2 p. m.

JUNE 3D.—Pursuant to adjournment parties appear. Reference adjourned to June 9th at 2 p. m.

JUNE 9TH.—Pursuant to adjournment parties appear. Reference adjourned to 14th at 1 p. m.

JUNE 14TH.—Pursuant to adjournment parties appear. Reference adjourned to 21st at 3½ p. m.

JUNE 21ST.—Pursuant to adjournment parties appear.

Claimants offer in evidence the direct testimony given by the
111 libellant Abiel Gove in the Philadelphia suit, mentioned in the testimony, with the papers "B" and "C," mentioned by him as part of his testimony; excluded; and exception by claimant.

It is stipulated that the question raised by this exception may be reserved without prejudice until the hearing on the report, and may then be considered.

Above offered testimony and papers are marked for identification "Exhibit A, E. L. O., June 21st, 1876;" it being stipulated that the printed copy marked may be used as the original.

Reference adjourned to July 14th at 11 a. m.

JUNE 30TH.—Pursuant to notice parties appear. Libellants call in rebuttal.

WILLIAM H. BICKMORE, being recalled, says:

I got a letter from Pusey, Jones & Co. in reference to repairing my vessel. I commenced repairs on the vessel on the 1st of October, 1874; the vessel went on the dock of Bierly, Hilman & Streaker on the 3d. I gave them the job on the 1st. The paper now shown me is the letter received from Pusey, Jones & Co.; this is the envelope; it was delivered by a messenger to my mate, and I got it from him on October 13th. The telegram now shown me was also received by me before the letter; it is from Pusey, Jones & Co. asking whether I had received the letter. I never had any conversation with Mr. Seaman in New York or any other place in which I said to him that I was going to use this as an opportunity of thoroughly overhauling the vessel, or of putting her in any better condition than she was before she was damaged. I did not repair her or put her in any better condition than she was before she was damaged. When the vessel was unloaded I found the break was below the water-mark, very near to the keel; in that condition it would not have been safe to take her to Wilmington, Delaware.

Cross-examined:

I asked Mr. Seaman if he would be responsible for the damage.
112 I told that him I wanted the vessel as good as she was before; this is all I remember of saying to him on the subject of repairs. I don't recollect referring to carpets.

Redirect:

I had a nice carpet on the cabin.

WILLIAM H. BICKMORE.

Subscribed and sworn to before me June 30th, 1876.

EDWARD L. OWEN,
U. S. Commissioner.

Adjourned to 14th July at 1 p. m.

Further adjourned to September 7th at 1 p. m.

SEPTEMBER 12TH, 1876.—Pursuant to consent parties appear.

JAMES W. ELWELL, being duly sworn for claimants, says: I am a shipping and commission merchant, and have been thirty-eight years owner of and agent for a great many vessels and have been during all that time. I have bought them, sold them, run them, lost and built them, and insured them.

(Testimony of Mr. Bierly read witness.)

Q. Assuming the schooner Allie Bickmore to have been injured in the manner described in Mr. Bierly's testimony by collision with the New Orleans, and to have been repaired as stated by Mr. Bierly, would the collision produce any permanent injury or in any way depreciate the market value of the vessel?

A. My impression is that it would not.

Q. Is it true that the value of a vessel either to sell or to charter or for any other pecuniary purpose is depreciated by the mere fact of a collision?

A. It does not if properly repaired.

113 Q. Is it not often the case that repairs after a collision make a vessel be ter, stronger, and more valuable than she was before?

(Objected to as immaterial; overruled; exception.)

A. Most generally.

Cross-examined:

Q. If there are evident signs of collision and straining on the vessel, such as opening the butts of the ceiling or planks, or either, does not that affect the market value of a vessel?

A. If it could be shown that the signs of weakness had been obviated by the vessel being thoroughly repaired and strengthened the value of the vessel would not be affected. If, by examination, without any explanation, if there were then signs, whether by collision or anything else, it would affect the value.

(Testimony of George Cornish and Mr. Gilchrist read witness.)

Q. In case of a vessel, 390 tons register, one year old, costing $39,000 when new, a three-masted schooner, which after being in collision with a steamer which struck on her port bow, cutting into her foremast and through the load of yellow-pine lumber stored in her bow, which, after repairs had been made upon her, left the evidence of strain testified to by Mr. Cornish and Mr. Gilchrist, would not such evidence, in your judgment, affect the market value?

A. Taking this testimony, I should think there would be; but taking Mr. Bierley's, I should think it would not.

Q. On the testimony of Mr. Bierley, that the starboard side had been twisted around by the collision, and that he shoved up, rebolted, and got the butts partly up, but not closed exactly, but far enough to make

them secure; and upon the testimony of Mr. Gilchrist and Mr. Cornish, that after the repairs those butts were opened a large quarter of an inch; would or would not such evidences of collision and straining affect the market value?

114 (Objected to as immaterial, on the ground that a limited part of Mr. Bierley's testimony only is assumed; overruled; exception.)

A. I presume it might, with some people; we frequently see as large butts in vessels.

Q. Is such opening a sign of a strain?

A. It is sometimes, but not always.

Q. In connection with the evidence that there had been such a collision as I have described to you, and that her starboard bow had been twisted, would you judge it to be an evidence of straining?

A. Yes; I judge it might be so.

Q. Taking the fact of the vessel having been in collision, and this evidence of straining left on her, would those two things, in your judgment, affect her market value with the dealers in vessels or purchasers of vessels?

(Objected to on the ground that the question is, that the contract should be between the vessel, as repaired in all parts, and her condition before the collision; overruled; exception.)

A. A vessel that shows signs of weakness by opening of butts, or water-way, or rail, is, of course, depreciated in her market value.

Redirect:

Q. And if the repairs upon the whole had made the vessel stronger than before the collision, do you still remain of the opinion that her value is not depreciated?

A. I do; I should say that a fair rate of demurrage for the Allie Bickmore, with a full crew on board, would be $40 to $45 a day; this assumes a crew of nine or ten, all told, and victualling.

Recross:

The value of the vessel does not enter into the question of demurrage; the tonnage does; the usual rate per ton varies from ten to twelve cents register tonnage.

115 Q. In your judgment, do repairs on the bow of a vessel increase the general strength of the stem?

A. I could not say that they do.

JAMES W. ELWELL.

Adjourned to September 13th at 4 p. m.

SEPTEMBER 13TH.—Pursuant to adjournment parties appear. Reference proceeds.

GEORGE CORNISH recalled for libellant:

Q. Did the repairs which Mr. Bierly put on the Allie Bickmore make her stronger or better as a vessel than she was before the collision?

A. No, sir; he used a portion of the old bolts in refastening those which did not break off in extracting. In refastening you have to bore new holes in the old timbers, and this weakens the old timbers. The ceiling of the Allie Bickmore was edge-bolted midships and some bolts driven through from the outside of the timbers, and riveted on the inside. Edge-bolting is performed by bolting each plank through its

edge to the next plank below it. A very little of old ceiling which came out in making the repairs was edge-bolted; it was not edge-bolted in putting it back; it could not be done; I think not more than three or four strakes of what came out was originally edge-bolted, and that on the after end; the reason they do not edge-bolt it forward is the ceiling is double thickness. It was not possible to edge-bolt the ceiling without taking out ceiling enough to get the bolts in.

Cross-examined:

Have heard read Mr. Bierly's testimony, in which he testifies to the respects in which the Allie Bickmore was made better after the repairs than she was before?

Q. Do you mean to testify that in those respects she was not made better?

A. I don't think she was any better after being repaired than
116 she was before. I was an owner from the time she was built; as far as I know, the captain acted as ship-husband; we never got any dividends from her that I know of. I will ascertain whether any accounts were ever rendered to me or my firm; and, if so, I will produce the account.

Redirect:

Q. Was the Allie Bickmore any worse after the collision and repairs?

A. I would not give so much for her. I don't think she was as good a vessel.

GEORGE CORNISH.

Adjourned to the 14th at .

OCTOBER 10TH, 1876.—Pursuant to consent parties appear. Reference proceeds.

JAMES HENRY, sworn for claimant, says: I reside in Brooklyn; do business in the city of New York. I am a ship-broker, and president of the Maritime Association, an organization of the shipping merchants, or those connected with shipping; been in the shipping business twenty-three years; have bought, sold, owned, and run vessels; have lost, built, and insured them.

Q. Where a schooner has been in collision with another vessel, and the injuries sustained have been entirely repaired, does the mere fact of collision permanently injure or depreciate the market value of the vessel?

A. No, sir; not in my judgment.

Q. Is it not often the case that repairs after collision make a vessel stronger, better, and more valuable than she was before?

(Objected to as incompetent; irrelevant; overruled; exception.)

A. It would depend upon the condition of the vessel previous to the collision.

(Question repeated.)

A. Yes, sir.

117 Cross-examined:

Q. Would you not qualify your last answer by some reference to the extent of the damages and the amount of the repairs?

(Objected to as to form; sustained; exception.)

Q. Would the extent of the damages and amount of repairs form elements in reference to the facts you consider in giving your answer to the last question?

A. If the ship is damaged by collision so that it can be repaired, and thoroughly repaired, there is no damage to the ship. I suppose I have had to do with eight or ten cases of collision and repairs.

Q. In case of a vessel of 390 tons register, costing $39,000 when new, or a year old, a three-masted schooner, which after being in collision with a steamer which struck her on the port bow, cutting into her to her foremast, and through the load of yellow-pine lumber stowed in the bow, which twisted her starboard bow, and to repair which she was shored up and rebolted, but got the butts partly up, but not closed exactly, which, when she was repaired, left her butts open a large quarter of an inch—would not such evidences of collision, and the fact that there having been such a collision, affect the market value?

(Objected to that only part of the testimony of libellants' witnesses is assumed; their carpenter testifying that after the repairs the vessel was stronger than before the collision; overruled; exception.)

A. Yes, sir; unfavorable. Such evidences would diminish her market value, but I can hardly answer to what extent; I should, think however, fully twenty-five per cent. of her value, whatever it might be.

Q. On direct-examination you were asked whether injuries by collision which had been entirely repaired affected her value, and you said they did not—did your answer assume the removal of all traces of collision?

A. Yes.

118 Redirect:

Q. In testifying to a depreciation by collision on your cross-examination, did you assume that the vessel was not completely repaired; that she could not be completely repaired; and that the evidence was apparent?

A. I did.

Q. Under any circumstances, if the vessel could be completely repaired, could the damage exceed the cost of repairs?

(Objected to; overruled; exception.)

A. If the vessel was completely repaired, I don't think there would be any damage; consequently there could be no damage exceeding the cost of repair.

Recross:

I never had a case of collision where either bow was twisted.

JAMES HENRY.

Reference adjourned to October 12th at 3 p. m.

OCTOBER 12TH.—Reference adjourned.

U. S. district court.

JOHN S. WEEKS ET AL.
vs.
THE STEAMSHIP NEW ORLEANS.

Deposition of Richard Poillon, taken October 20, 1876, for claimants. I am, and for thirty years have been, a ship-builder and shipwright, in the city of New York, engaged in building and repairing vessels of all kinds and sizes; my yards are in Brooklyn and New York. (The testimony of Mr. Bierly as to the extent of the damages and repairs made to the Allie Bickmore read to the witness and he is asked:)

119 Q. Do you understand from that account what injuries were received, and what repairs were put upon the Allie Bickmore?

A. Yes.

Q. What at the time the repairs were made, September to November, 1874, was a reasonable allowance of time in which to make such repairs?

(Before answering, the witness examines the carpenter's bill, and is told that the vessel was 390 tons.)

A. I should regard three weeks as a sufficient time; that is from the time you have a chance to fairly get to work on her, from the time she is placed on the dock; without having seen the vessel, I would not like to state what would be the fair cost of making the repairs.

Cross-examined:

I am not particularly acquainted with the facilities of Philadelphia ship-yards for doing work, only from hearsay. We regard New York as a place not excelled in its facilities for doing work. My estimate of time is based upon our facilities for doing work.

Q. Would you regard one week more as an indication of neglect in forwarding the work?

A. I regard three weeks as an ample time.

(Question repeated.)

A. I should regard it as an indication of their not driving the work as fast as they should; my estimate of time assumes the employment of fifty men most of the time; at time in finishing up so many could not work to advantage.

Redirect:

The mast could be put in while other work was progressing.

RICHARD POILLON.

Sworn to before me this 20th day of October, 1876.

GEO. A. BLACK,
Notary Public, N. Y. Co.

120 HENRY W. LOUD, sworn, testified: The Allie Bickmore had been constantly employed from the time she was launched. My firm acted as her New York representatives. Her rate prior to the collision, I am under the impression, was one 1; for eleven years; I do not know what her rate was after the collision, I think if there had been any cut down I should have known it. Accounts of the voyages were rendered to me by the captain, and we made up voyage accounts for the captain, but not for the owners. I am not aware that the owners have received any accounts until after the vessel was lost after the collision

Cross-examination:

The vessel earned over and above all expenses, from the time she was launched down to the time of the collision, 86,272.14. This money was not divided among the owners, because it was used to pay off her top bills—that is sails, rigging, and outfits—part of her original cost. It embraced from October 28, 1873, down to October, 1874. This includes the voyage she was on at the time of the collision.

HENRY W. LOUD.

Sworn to before me this 20th day of October, 1876.

GEO. A. BLACK,
Notary Public, N. Y. Co.

NOVEMBER 6TH, 1876.—By consent, parties appear.

JOHN GALLAGHER, being sworn for claimants, says:

I am over seventy years old. I am surveyor in Philadelphia for the Bureau Veritas; have held that position twenty years; I reside in Philadelphia. My business consists in surveying vessels damaged; it is my duty to see that she is repaired properly, and to put her in the same position so as to maintain her same class that she is entitled to previous to any accident. I remember the Allie Bickmore when she came to Philadelphia after the collision; I saw her most every day while repairs were being made. I examined her after the repairs were complete; there was no appearance of strain in her butts on
121 the starboard side; there was nothing else which indicated that she had been in collision, or had been strained; I gave her her original rate.

Cross-examined:

I last saw her, I think, in the fall of 1874; I saw her up at the shipyard; she had a new mast in at that time; it was after all the painting had been done on her; this was the time I visited her to see if she was entitled to a confirmation of her rate. I had been looking at her every day; we had also a survey by order of Judge Cadwallader of the United States district court; this was prior to the commencement of the repairs, and it was carried right through the whole time I was a member of that survey. I don't think anybody was present when I made the final survey. My attention had never been directed to any twisting of the vessel; I don't remember that I knew any repairs had been made to her starboard bow. I can't remember whether I saw any repairs made to her starboard bow; I am acquainted with Bierley, Hilman & Co., who did the repairs on her; I have known them many years.

Q. Mr. Bierly, the shipwright who did the repairs on this vessel, testified that the work done was as follows. (Counsel reads testimony of Mr. Bierly.) Having heard read the testimony of Mr. Bierley, are your able from your recollection to say that he is in error as to the starboard side having been twisted by the collision, or that the butts were started and got partly back on that side?

A. I do not recollect anything about that; I don't think the butts were started on the starboard side.

Q. Why do you so think?

A. Because I examined it, and to the best of my recollection they were not started.

Q. Are you willing to swear that they were not started?

A. No, I will not swear to it; I am not a practical ship-builder.

JOHN GALLAGHER.

Adjourned to 11th at 2 p. m.

122 NOVEMBER 11TH.—Pursuant to adjournment, parties appear. Reference proceeds.

LEVI HAYDEN, being sworn for claimants, says:

I do business in the city of New York, 42 Duane street; I am connected with the Morris & Corning Dredging Company; they purchased part of the cargo of the Allie Bickmore at the time of the collision; it was yellow pine, about 150,000 feet. We bought it on an order previously given, fixing the price at the time the order was given. The order was given some six weeks before the lumber arrived.

Q. Was any deduction made in settling for the lumber with reference to the condition in which it was delivered?

(Objected to as not competent and not relevant to the measure of damage.)

A. None whatever.

Cross-examination:

Some three or four weeks after we expected the lumber it arrived; we had been expecting it for that length of time; we are not dealers in lumber; we are consumers; we were in need of this lumber; we were building mud-barges; we needed this lumber to complete the work. The lumber was a little muddy and dirty when it reached us, and the edges were a little torn by a second handling; it was not as good as a cargo delivered on a safe voyage. I first saw invoices about the time of its arrival at Philadelphia; we had the option of taking this lumber, and we elected to take it. There was a writing agreement in regard to this lumber. No specification of the vessel. This was dimension timber, the sizes being specified.

Redirect:

Used lumber right away after it was delivered, I think. I did not know that the timber was to come by the Allie Bickmore until her arrival at Philadelphia; I was informed that it had been wrecked and was on its way to Philadelphia. They were desirous we should take it.

123 Q. Did you express any choice about receiving the lumber, and, if so, what was done by the sellers?

(Objected to as incompetent and irrelevant; overruled; exception.)

A. I stated to Mr. Howell that I would full as leave that he should take it off our hands; and he was desirous we should take it.

Recross:

I stated that I would rather not have it; but as a matter of courtesy to Mr. Howell we did take it.

LEVI HAYDEN.

Mr. Parsons reads in evidence the depositions of William Poillon and Henry W. Loud.

NOVEMBER 29TH, 1876.—Pursuant to consent, parties appear. Reference proceeds.

WILLIAM H. HAZZARD, sworn for claimants, says:

I reside in the city of Brooklyn; am a builder. I remember the report of the collision between the Allie Bickmore and New Orleans, about two years ago last September.

Q. Was the Allie Bickmore at the time bringing for you a quantity of lumber; and, if so, under what circumstances had it been ordered?

(Objected to on the ground that there is no evidence that there is no contract proved between the witness and the owner of the schooner or the owners of the lumber; and that any answer that he may give as to her bringing it to him will be mere hearsay; overruled; exception.)

A. As the parties with whom I had a contract with so reported to me she was; I ordered it in the preceding April or early in May; the sizes and prices were then fixed; the bid for the lumber came from the St. Mary's River Lumber Company; I did not know the company, and did not care to rely upon their responsibility; Mr. Ross Sand-

124 ford, who attended to the business of Peter Sandford & Co., and a member of that firm, was interested in the lumber company; I knew Peter Sandford & Co., and was satisfied with their responsibility, and I made the contract with Peter Sandford & Co. to supply the lumber; they never gave me a bid, but the contract was made on the bid of the St. Mary's Lumber Company; by Ross Sandford I mean a nephew of Peter Sandford, who goes by the name of Ross; he is a short man, light hair. He attended to the business of the St. Mary's Lumber Company; my whole business was done with him and Mr. Howell, except all the money was paid to the man called Ross, the manager of Peter Sandford & Company. I produce the last bill paid, which shows how the business was done—

(Bill offered in evidence marked "'A,' E. L. O., November 29th, 1876.")

(Mr. Parsons proceeds to read the bill in substance to have it on the minutes.

Mr. Black objects to this procedure, and insists that the original or a copy be annexed.)

The bill is to the joint name of Peter Sandford & Company and St. Mary's River Lumber Company, dated December 14th, 1874, and is receipted, John J. Ross for lumber company, and Ross for Sandford & Company. John J. Ross is a brother of the Ross of whom I speak.

Q. Did you pay for the lumber at the same rate at which it was ordered?

(Objected to, on the ground that it is not competent evidence on the question of damages; overruled; exception.)

A. I did.

Q. Did you pay anything in addition; if so, what?

(Same objection; same ruling; exception.)

A. I paid $100 toward the expense of getting the lumber from Philadelphia here, in addition to the new contract price.

125 Cross-examined:

I came to pay the $100 because they talked of selling the lumber in Philadelphia, after she went there in distress. They said it would be so expensive to get it on here, and I was in such need of the lumber that I offered to pay $100 toward freighting it on here, rather than wait until they could send after another cargo. I had work under contract standing idle, waiting for this lumber. I waited for it four weeks until I got it. I had no bill of lading of it. I had no contract directly with the St. Mary's Lumber Company. The person with whom I dealt was this Ross; the firm I had the contract with was Peter Sandford & Co., and my dealings with Ross were as the representative of Peter Sandford & Co. When I first saw the lumber it was wet, and there was some dirt on it; some of it damaged by the breaking of the edges; some of the pieces cut in two where the steamer struck it. I have bought a great deal of yellow pine lumber for my use. My contract was to be merchantable lumber. I should have passed this lumber and accepted it under my contract, after inspection by the regular inspector, if it had arrived here without a collision, just as we did. I did not pay for the lumber that was damaged; I did not receive it. When it was inspected the inspector marked off the damaged part. The inspector deducted all the parts damaged by being cut by the collision. If five feet of a plank was cut by the collision the inspector would mark that off and deduct it from the measurements. The lumber was just as good for me as it ever was, except the parts cut; it did not hurt it to be wet

for my use. I put the whole of the flooring through the machine to be dressed. They were dressed at Osborn's machines; there was not dirt enough in it to hurt the machines or lumber. The Allie Bickmore's cargo was only one of several to fill the contract. I don't know whether I received the entire amount of the Allie Bickmore cargo, but I think not.

Q. Do you know by any dealings of your own whether there was any decline or advance in lumber between the time of the receipt of this lumber by the Allie Bickmore by you and the time of your contract with Sandford & Company?

126 (Objected to, on the ground that the question assumes what is not the fact; the contract, according to the testimony, having been just as much with the lumber company as with Sandford & Company. Reserved.)

A. I could contract about the same; if anything, a little bit less. I received the last of the lumber about the 14th of December, 1874, and paid for it immediately.

WILLIAM H. HAZZARD.

LENGTH.	WIDTH.	THICKNESS.
	October 7th.	
48	16	3½
41	14	4½
35	14	4
46	14	3½
35	14	3½
	October 8th.	
35	14	4
50	16	3½
36	14	3½
24	14	3½
31	14	3
40	11	3
	October 9th.	
50	16	4
38	14	3½
38	14	3½
44	11	3
	October 11th.	
50	16	3½
35	14	3½
40	11	3
	October 12th.	
50	15	4
50	15	4
40	11	3
30	13	8
44	15	3½
Oak chock.		
5	8	7
3	10	7
15	14	14 yellow pine water way.

HACKMATACK KNEES.

Four	8 inches.
Seven	7 "
One	6 "
Three	4 "

PALL BIT.

Length, 14; width, 14; th., 18.

BEAD UNDER BOWSPRIT.

White pine	19	26	6

DECK PLANK.

Length	3,568 feet.

THE WHOLE BILL.

300 large spiles, yellow pine	36	14	2
" "	36	14	2
Beam	12	12	20
Oak piers	6	15	4
Water way	11	11	10
Beam	10	10	12
Yellow pine plank	11	12	3

CHAS. W. HOWELL.

127 U. S. district court.

JOHN S. WEEKS ET AL.
vs.
THE STEAMSHIP NEW ORLEANS, her engines, &c.

Pursuant to notice given by commissioner, proctors for respective parties attend, and proctors for libellants recall Jacob Birely, who, being sworn, says:

Q. On your former examination you testified that in making the repairs on the Allie Bickmore you used longer timbers and stronger fastenings, and that when the job was completed the port bow, which you repaired, was stronger than the starboard; in what way was the job made more costly?

A. The job was much more strong by being long timbers, from the fact that there were but few butts in the frame; but I don't see that it was made more costly in that particular, because there were less butts to make in the frame. We went from the keelson to the top of the rail with three, when before there were from five to six. There was less labor expended in using those longer timbers, because there were less butts to make; the expense was lessened by using the long timbers. She was stronger fastened than she was before on the port bow, because our fastenings passed through, and were rivetted on the inside. We had no such things as patent fastening, and if that appears in my former testimony it is a mistake. Our treenails went through from outside to inside, and were wedged at each end. These additional wedgings increase the strength at that particular place. The additional expense caused by this mode of fastening would be from $350 to $400. The work was not delayed by this fastening, because we put additional men on the job. If we had not put in these fastenings we could not have finished the job any sooner. The vessel
128 was stronger in the particular place, but in other places it did not add to the strength.

By the commissioner:

I think it increased the value of the vessel over what it was before the accident happened a difference of $500 or $600. I mean the vessel was worth that much more after these repairs; that is, taking in the longer timbers and the many things that were done to the vessel. These repairs were done according to the manner of doing repairs in our yard and in Philadelphia.

Q. If you had made the repairs so that the bolts ran only part way through, would that have been an unusual way for you to have made repairs?

A. Yes, sir; and would not have been allowed by our inspectors—I mean the underwriters' inspectors. There would have been no delay in making the additional repairs to the starboard bow. The starboard bow was started, and to have taken off the plank and replaced them as they were before the collision would have cost about $1,000; this is in addition to what was expended in making the repairs.

No cross-examination.

JACOB BIRELY.

Subscribed and sworn to before me this 20th day of February, 1877.

EDWARD L. OWEN,
U. S. Commissioner.

JOHN S. WEEKS AND OTHERS
against
THE STEAMER NEW ORLEANS, HER ENGINE, &C.

In pursuance of a decretal order made and entered in the above-entitled cause on the 31st day of May, 1875, wherein it was adjudged and decreed that the libellants recover in the action against the steamer New Orleans, the damages by them sustained by reason of the collision in their libel set forth, and that it be referred to a commissioner of this court, to ascertain and compute the amount of such damages, and to report to this court with all convenient speed.

I, Edward L. Owen, the commissioner to whom it was referred to ascertain such damages, do report, that I have been attended by the proctors for the respective parties, and have taken and considered the testimony offered in support of the libellants' claim, and that in opposition, and do find the libellants' damages to be as follows:

Bill for towage from capes of Delaware to Philadelphia, Ex. A, June 12th, 1875	$275 00	
Interest thereon from November 9th, 1874, to date	39 19	
		$314 19
Bill for health dues at port of Philadelphia, Ex. B, June 12th, 1875	10 00	
Interest thereon from September 7th, 1874, to date	1 53	
		11 53
Bill for towage from Simpson's dock to foot of Dickinson's street, Ex. C, June 12th, 1875	10 00	
Interest thereon from September 9th, 1874, to date	1 52	
		11 52
130 Bill for board of crew ashore, before they were paid off, Ex. E	$19 00	
Interest thereon from September 11th, 1874, to date	2 89	
		$21 89
Bill for wharfage, Ex. F	2 00	
Interest thereon from September 14th, 1874, to date	30	
		2 30
Bill for towage from Dickinson's wharf to Richmond, Ex. I, June 12th, 1875	15 00	
Interest thereon from September 17th, 1874, to date	2 27	
		17 27
Bill for shoving schooner up into shallow water, Ex. G	10 00	
Interest thereon from September 15th, 1874, to date	1 51	
		11 51
Bill for shoving schooner in shoal water, Ex. H, June 12th, 1875	3 00	
Interest thereon from September 15th, 1874, to date	45	
		3 45
Bill for cleaning up the wreck, Ex. K, June 12th, 1875	17 00	
Interest thereon from September 21st, 1874, to date	2 56	
		19 56
Bill for cleaning up wreck, Ex. L, June 12th, 1875	17 00	
Interest thereon from September 21st, 1874, to date	2 56	
		19 56

	Bill for services rendered in saving and getting vessel afloat, Ex. M, June 12th, 1875		327 00	
	Interest thereon from September 23d, 1874, to date		49 10	
				376 10
131	Bill for wharfage, Ex. N, June 12th, 1875		$12 00	
	Interest thereon from September 28th, 1874, to date		1 80	
				$13 80
	Bill for discharging the lumber, Ex. O, June 12th, 1875	$396 50		
	From this must be deducted the expense of discharging the lumber at New York, which, according to Bickmore's testimony, would have been seventy cents per thousand feet, or 330,000 feet, amount of cargo	231 00		
	Difference being chargeable to collision		165 50	
	Interest thereon from September 30th, 1874, to date		24 66	
				190 16
	Towage from Donaldson's wharf to dry-dock, Ex. P, June 12th, 1875		5 00	
	Interest thereon from October 1st, 1874, to date		75	
				5 75
	Wharfage while seeking a place to discharge, Ex. Q, June 12th, 1875		6 00	
	Interest thereon from October 6th, 1874, to date		89	
				6 89
	Wharfage while discharging, Ex. T, June 12th, 1875	$45 00		
	From this must be deducted the wharfage which would have been incurred in New York upon discharging the lumber, if the schooner had arrived; from Bickmore's testimony it would have taken seven days to discharge the cargo at New York, and			
132	the wharfage per day would have been $4.25, or for the seven days	$29 75		
	Difference being chargeable to collision		$15 25	
	Interest thereon from October 31st, 1874, to date		2 19	
				$17 44
	Bill for use of shears in putting in new mast, and wharfage during time, Ex. U		19 50	
	Interest thereon from October 31st, 1874, to date		2 81	
				22 31
	Bill for carpeting destroyed by collision		62 59	
	Interest thereon from November 3d, 1874, to date		8 98	
				71 57
	Bill for ship chandlery, Ex. 2, June 12th, 1875, after making deductions specified by Captain Bickmore of $2.50 for log-book, $2.00 for brass swinging-lamp; and twenty fathoms of manilla rope, $12.61		620 23	
	Interest thereon from November 2d, 1874, to date		89 10	
				709 33
	Bill for repairs of furniture, Ex. 3, June 12th, 1875		19 00	

Interest thereon from November 2d, 1874, to date....	2 73	
		21 73
Bill of bureau veritas for reclassifying vessel, Ex. 4, June 12th, 1875	15 00	
Interest thereon from November 2d, 1874, to date....	2 15	
		17 15
Bill repairing stove, Ex. 5, June 12th, 1875	7 84	
Interest thereon from November 5th, 1874, to date...	1 12	
		8 96
133 Bill for repairs, Ex. 6, June 12th, 1875," after making deductions specified by Captain Bickmore, as not chargeable, $3 for iron cans, seventy-five cents for demijohn	$29 95	
Interest thereon from November 6th, 1874, to date...	4 28	
		$34 23
Bill for new jib and repairs to sails, Ex. 7, June 12th, 1875,	164 03	
Interest thereon from November 6th, 1874, to date...	23 46	
		187 49
Bill for rigging the vessel, Ex. 9, June 12th, 1875,...	220 88	
Interest thereon from November 7th, 1874, to date...	31 54	
		252 42
Bill for labor in resalting the vessel, Ex. 10, June 12th, 1875,	17 00	
Interest thereon from November 17th, 1874, to date..	2 40	
		19 40
Bill for stowage and cartage of cabin furniture, Ex. 11, June 12th, 1875,"	6 50	
Interest thereon from November 9th, 1874, to date..	93	
		7 43
Bill for painting damages, Ex. 12, June 12th, 1875...	375 25	
Interest thereon from November 9th, 1874, to date..	53 47	
		428 72
Value of new mast purchased in New York, to replace one lost, Ex. 17, July 13th, 1875	450 00	
Interest thereon from November 10th, 1874, to date..	64 05	
		514 05
This mast was purchased in New York, because one of sufficient size could not be purchased in Philadel-
134 phia. The freight on the same from New York to Philadelphia, I therefore allow, being	$60 00	
Interest thereon from November 10th, 1874, to date..	8 54	
		$68 54
While the repairs were going on the two mates in addition to the captain of the vessel, rendered assistance during this time; they were unable to live on board, but were obliged to live on shore at an expense of fifty cents a day for each man over and above what it would have cost to live on board; the whole amount paid on this account was $94.50, which sum is a proper item of damages, and therefore I allow the same	94 50	
Interest thereon from November 10th, 1874, date of completion of repairs to date	13 45	
		107 95

The claimants insist that the bill of Birely, Hillman & Streaker, who repaired the damages amounting to $6,981.01, should be entirely ignored in estimating the damages, and that the estimate of repairs made by Pusey, Jones & Co., amounting to $4,300 should be reported as the amount of damages sustained by the libellants.

It is true that in case of collusion or fraud such claim would be well founded, but in the present case I find nothing to justify a conclusion that there was fraud or collusion between the owners of the schooner and the shipwrights who did the repairs, and therefore cannot consider such claim.

It appears that in making the repairs long timbers where used where before there were short timbers, and that
135 longer fastenings were used than were previously used in the vessel; that this was the customary way of making repairs in Philadelphia, and that the effect upon the vessel was to strengthen her and increase her value from $500 to $600.

I therefore allow the bill of Birely, Hillman & Streaker, September 8th, 1875, Ex. 4	$6,981 01	
Deduct increase in value of schooner after repairs	600 00	
		6,381 01
Interest thereon from November 10th, 1874, date of completion of repairs to date	908 23	
		7,289 24

The damages to the schooner were mainly on the port-side forward, but the collision had twisted the starboard side around, and had started some of the butts on that side; in repairing these butts they were not got back as close as they were before, although they were secured sufficiently by caulking; the libellants insist that by reason of these butts not being closed the schooner's market value was depreciated from $4,500 to $5,500, and therefore claim to be entitled to an allowance for such depreciation.

This claim I disallow, but Birely, the ship-carpenter, says that at an additional expense of $1,000, these butts could have been completely closed, and as the libellants were entitled to have the schooner put in the same condition she was before the collision I allow this item, but without interest | 1,000 00 | 1,000 00

136 Estimated damages to sails not repaired (see testimony of Bickmore) $176 78

LOSS OF PROVISIONS AND PERSONAL EFFECTS.

Captain Bickmore who was master and part owner was sailing the schooner on shares; the provisions on board belonged to him and were worth the sum of $100; he also lost charts and personal effect to the value of $14—these two items are allowed $114 00

Interest thereon from September 6th, 1874, date of collision to date 17 44

131 44

DEMURRAGE:

The schooner was bound on a voyage to New York, and the collision happened on the 6th day of September, 1874, and the repairs were completed on the 10th day of November, 1874; a period of sixty-four days thus elapsed after the collision before the schooner was ready to resume employment; this time was necessarily consumed in clearing away the wreck, discharging cargo, preparing the schooner for repairs and making the repairs; it would have taken the schooner two days to have completed her voyage to New York, and if she had arrived there, seven days would have been consumed in discharging cargo, so that these nine days must be deducted from the sixty-four above mentioned in order to ascertain the actual detention.

I have allowed as thee rate of demurrage for a schooner such as the Allie Bickmore the sum of fifty dollars
137 a day, but from the total demurrage there must be deducted wages and provisions of the crew discharged, amounting to $401.34 (see testimony of Bickmore), and board of crew on shore before they were discharged, already allowed as a separate item amounting to nineteen dollars.

TO RECAPITULATE:

The vessel was detained fifty-five days; her value per day was fifty dollars, or for fifty-five days		2,650 00
Deduct wages and provisions of crew discharged	$401 34	
Board of crew on shore	19 00	
		420 34
Actual demurrage		2,329 66

The libellants claim interest on demurrage; this, however, I disallow.

FREIGHT:

The vessel had a cargo of lumber; she was under charter (Ex. 16), and according to the terms of the charter was to receive freight at the rate of ten dollars a thousand feet.

As the cargo was delivered in Philadelphia instead of New York where it should have been under the charter-party, a deduction of $648 on account of freight was made to meet the expense of transporting the lumber to New York; this deduction was chargeable to the collision, and therefore I allow the same as an item of damage		648 00
Interest thereon from October 1st, 1874, the date of the delivery of the cargo to date		96 44
		744 44

138 CARGO:

The value of cargo lost and destroyed by reason of the collision (see testimony of Stetson), was	147 36	
Interest thereon from September 6th, 1874, to date	22 54	
		169 90
Expense of stowing lumber in Philadelphia	117 00	
Interest thereon from October 1st, 1874, the day the last of the cargo was raised, to date	17 42	
		134 42

The expense incurred in transporting the cargo from Philadelphia to New York, amounting to $1,090.09, is a proper item of damages, but as the owners of the vessel made a deduction on freight amounting to $648, to cover such transportation, I have deducted the latter amount from the former, leaving the amount allowed the sum of $442.09.

TO RECAPITULATE:

Expense incurred in transporting cargo from Philadelphia to New York	$1,090 09		
Deduct allowance made on account of freight	648 00		
Leaves due for expense of transportation	442 09	442 09	
Interest thereon from October 1st, 1874, to date		65 80	
			507 89

A claim is made by the libellants for $861.24, for damages to lumber; while it is true that the lumber was damaged by dirt and by handling, still I disallow the item because the evidence shows that this lumber was
139 purchased by Morris & Cummings (testimony of Hayden) and by Hazard, and that the price paid by them was the sound price, no deductions having been made for alleged damages.

I have disallowed Ex. D and S, for noting and extending protest, Ex. R 1, R 2, R 3, R 4, for survey, and Ex. 14 for adjusters' fees, because I do not think either were proper items of damage.

I have also disallowed Ex. 8, expense for watching, Ex. 13, for oakum and telegram, and captain's travelling expenses, because I do not find any evidence showing that the same were necessarily incurred by reason of the collision.

I also disallow the claim of Mr. Cornish for services in superintending repairs, because there was no necessity of the same, as the captain was present most of the time.

$15,997 97

The whole amount of damages I find due the libellants is the sum of fifteen thousand nine hundred and ninety-seven dollars and ninety-seven cents.

Dated New York, March 24th, 1877.

EDWARD L. OWEN,
U. S. Commissioner.

140 EXHIBIT A.—E. L. O., June 12, 1875.

PHILADELPHIA, *September* 7, 1874.

Schooner Allie Bickmore and owners, to steam tug-boat America, Dr.

[S. & J. M. Flanagan, 420 South Wharves, Consignees.]

For services towing vessel from capes to Philadelphia.....	$250 00
For use of hawser.....	25 00
	$275 00

Received payment.

S. & J. M. FLANAGAN,
Per J. C. VERSCUER.

Phila., Nov. 9, 1874.
Paid under protest.

W. H. BICKMORE.

EXHIBIT B.—E. L. O., June 12, 1875.

PHILADELPHIA, *Sept.* 7, 1874.

Schooner Allie Bickmore, Captain Bickmore:

Port from Ferandina..... $10 00
For health dues.
Received payment.

J. E. ADDICKS,
C, Health Officer.

EXHIBIT C.—E. L. O., June 12, 1875.

PHILADELPHIA, *Sept.* 9, 1874.

Master and owners of schooner Allie Bickmore, to steam-tug Wm. G. Boulton, Dr.

For towing from Simpson's wharf to Dickinson street..... $10 00
Received payment for owners,

S. LARSEN,
Per GUS CHRISTIANSON.

EXHIBIT D.—E. L. O., June 12, 1875.

[406 Library street, E. H. Bailey, custom-house broker and notary public.]

PHILADELPHIA, *Sept.* 9, 1874.

Schooner Allie Bickmore and owners, to E. H. Bailey, Dr.

Sept. 7.—To noting protest.....	$1 50
To certified copy of letter from captain steamer New Orleans.....	3 00
" 9.—Extension of protest, and certified copy of same.....	10 00
	$14 50

Received payment.

E. H. BAILEY,
Per THOMLEY.

141 EXHIBIT E.—E. L. O., June 12, 1875.

PHILADELPHIA, *Sept.* 11, 1874.

This is to certify that Capt. W. H. Bickmore, of the schooner Allie Bickmore, has paid to his board on part of crew, nineteen dollars.

JOHN H. YOUNG,
Shipping Commissioner,
Per E. W. YOUNG.

$19.00.

EXHIBIT F.—E. L. O., June 12, 1875.

JOHN H. SCOTT, SR. ALBERT A. ARDIS.

PHILADELPHIA, *Sept.* 14, 1874.

Schooner Allie Bickmore and owners bought of Scott & Ardis, wood, sand, manure, stone, and gravel. Pier No. 61, Dickinson-street wharf. Wharfage and landing. Terms cash.

Sept 9. To wharfage $2 00

Received payment.

W. E. ARDIS,
Per P. R. R.

W. H. BICKMORE.

EXHIBIT G.—E. L. O., June 12, 1875.

PHILADELPHIA, *Sept.* 15, 1874.

Schooner and owners to steam-tug J. W. Paxson, Dr.

For towing in the dock $10 00

Received payment.

JAMES ARMSTRONG.

EXHIBIT H.—E. L. O., June 12, 1875.

[Office 420 South Delaware avenue.]

PHILADELPHIA, *September* 15, 1874.

Schooner Allie Bickmore and owners to steam-tug Champion, Dr.

For docking at Plum street $3 00

Received payment for the owners.

WILLIAM S. OUTERBRIDGE.

EXHIBIT I.—E. L. O., June 12, 1875.

PHILADELPHIA, *September* 17, 1874.

Master and owners of schooner Allie Bickmore to steam-tug Wm. G. Boulton, Dr.

For towing from Dickinson street to Plum-street wharf $15 00

Received payment for owners.

S. LARSEN,
Per GUS CHRISTIANSON.

142 EXHIBIT K.—E. L. O., June 12, 1875.

PHILADELPHIA, *Sept.* 2, 1874.

Schooner Allie Bickmore and owners to J. Green, Dr.

To eight days' labor..... $17 00

Received payment.

J. GREEN.

EXHIBIT L.—E. L. O., June 12, 1875.

PHILADELPHIA, *September* 21, 1874.

Schooner Allie Bickmore and owners to William Friend, Dr.

To eight days' labor..... $17 00

Received payment.

W. P. FRIEND.

EXHIBIT M.—E. L. O., June 12, 1875.

PHILADELPHIA, *September* 23, 1874.

Schooner Allie Bickmore to Mason, Hobbs & Co., Dr.

[Steam-pumps, submarine diving, and apparatus for raising sunken vessels and boats, Nos. 420 South wharves & 2437 Callowhill st.]

For services of diver and use of apparatus in stopping hole in bow, including material used, and for services of steam-tug pumping out schooner as per contract..... $300 00

For amount paid for labor pumping to keep schooner afloat after being pumped out by steamer, her contract being finished..... 27 00

$327 00

Received payment for Mason, Hobbs & Co.

WM. S. OUTERBRIDGE.

(Duplicate.)

EXHIBIT N.—E. L. O., June 12, 1875.

[Pennsylvania Railroad Company, freight station, Reed-street wharf.]

PHILADELPHIA, *September* 28, 187 .

Schooner A. Bickmore to Pennsylvania Railroad Co., Dr.

For wharfage..... $12 00

Received payment.

R. W. ELLIOTT,
For P. R. R.

143 EXHIBIT O.—E. L. O., June 12, 1875.

PHILADELPHIA, *Sept.* 30, 1874.

Schooner Allie Bickmore and owners to Francis Barnes, Dr.

For disch'g 300,000 lumber, c. $1.15	$379 50
Labor transporting from Simpson wharf to Dickerson street.	8 50
Labor transporting Dickerson street to Richmond	8 50
	$396 50

Received payment.

FRANCIS BARNES.

EXHIBIT P.—E. L. O., June 12, 1875.

PHILADELPHIA, *Oct.* 1*st*, 1874.

Schooner A. Bickmore and owners to propeller M. D. Wheeler, Dr.

For towing from Donelson's wharf to Byerly's wharf $5 00

Received payment.

JAMES W. HOOVER.

Approved by W. H. Bickmore.

EXHIBIT Q.—E. L. O., June 12, 1875.

[Office of A. S. Simpson & Bro., sectional dry docks, foot of Christian street.]

PHILADELPHIA, *October* 6*th*, 1874.

Schooner Allie Bickmore and owners, Dr.

For wharfage from Sept. 7 to 9 (loaded), 2 days, at $3 per day. $6 00

Received payment.

A. S. SIMPSON & BRO.,
Per CHAS. M. ERSKINE.

EXHIBIT R.—E. L. O., June 12, 1875.

PHILADELPHIA, *October* 28*th*, 1874.

Schooner Allie Bickmore and owners to surveyors of damaged vessels, cargoes, &c., Dr.

To writ and special survey on hull, tackle, and apparel..... $36 00

Received payment.

G. H. HEWITT.

(Duplicate.)

EXHIBIT R 2.—E. L. O., June 12, 1875.

PHILADELPHIA, *October 28th*, 1874.

Schooner Allie Bickmore and owners to surveyors of damaged vessels, cargoes, &c., Dr.

To certificate of damage on rope, sails, &c $10 00

Received payment.

G. H. HEWITT.

(Duplicate.)

144 EXHIBIT R 3.—E. L. O., June 12, 1875.

PHILADELPHIA, *October 28th*, 1874.

Schooner Allie Bickmore and owners to surveyors of damaged vessels, cargoes, &c., Dr.

To certificate of valuation $10 00

Received payment.

G. H. HEWITT.

(Duplicate.)

EXHIBIT R 4.—E. L. O., June 12, 1875.

In the district court of the United States in and for the eastern district of Pennsylvania. In admiralty.

Special survey vessel.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Port of Philadelphia, ss:

[L. S.] John Cadwalader, judge of the district court of the United States in and for the eastern district of Pennsylvania, to John Gallagher, George T. Hewitt, James Rowland, and John H. Young, greeting:

Be it known that upon the application of W. H. Bickmore, master, desiring a survey as hereinafter set forth, you are hereby directed, in the name and by the authority of the United States, forthwith diligently and carefully to survey and examine the hull, spars, and rigging of the schooner or vessel called the Allie Bickmore, lately arrived from Fernandina, and now lying at the port of Philadelphia; and you are to estimate the amount of damage or loss, if any which the same may have sustained during said voyage, calling to your aid experts, if necessary, in estimating such amount; and you are to make a minute specification of the damage done to said vessel, her rigging, sails, &c., and to declare what repairs, if any, are necessary in consequence of such damage; and you are also to ascertain the occasion and cause of such damage; and having completed such inspection and survey, with all due diligence, you are hereby commanded to make return to our said court without delay, under your hands, and upon your respective

oaths or solemn affirmations, how you shall have executed this writ, and setting forth in such return all whatsoever your doings in the premises, severally and respectively; and attach said return to this our writ, and herein fail not.

Given under the seal of the said district court, at Philadelphia, this 12th day of September, A. D. 1874, and in the ninety-ninth year of the Independence of the United States.

J. B. BEAVER,
Pro. Clerk District Court.

Whereupon, afterwards, to wit, on the 29th day of October, A. D. 1874, the said surveyors make and file their report, in the words following, to wit:

145 PORT OF PHILADELPHIA.

To the honorable John Cadwalader, judge of the district court of the United States, in and for the eastern district of Pennsylvania:

We, of the board of survey of the admiralty, whose names are endorsed on the annexed writ, do hereby certify and return, that, in obedience thereto, we did forthwith diligently and carefully survey and examine the hull, spars, and rigging of the schooner or vessel called the Allie Bickmore, lately arrived from Fernandina, bound for New York, put into this port damaged, and then being at the port of Philadelphia, and we did thereupon find, on interrogating the master, that said vessel, when off the capes of Delaware, collided with steamer New Orleans, thereby having the port-bow stove in, causing said schooner to fill with water, in which condition she arrived at this port. We therefore recommend that she be grounded at high water in a safe dock, that the tide may ebb out of the hold and the cargo (lumber) be discharged. This having been partially complied with, we did, on this 23d day of September, 1874, further examine said schooner, and, finding the hole in the bow extending much below the water line, we further recommend that a submarine diver be employed to cover and stop the hole, that the balance of cargo be discharged, and that she be pumped out and taken on a dry dock for further examination. This also having been complied with, we did, on the 3d day of October, 1874, find, upon further interrogating the master and carefully examining said vessel, the following losses and damages, to wit: The port-bow cut down from the rail to within five streaks of keel, breaking and crushing bulwarks, twenty-four outside planks and metal attached, and twenty-one of ceiling and clamps inside; twenty-two timbers, three pair of hooks and pointers, two deck beams, carlins, and fore-and-aft pieces, eight deck and four hanging-knees, pall and windlass bits and knees, windlass and gear, main deck from forehatch forward, with forecastle, deck and frame, forescuttle, two iron bow-chocks, cat-head, one iron warping-chock, eyebolts, and dead-eyes of jib-boom, guys and martingale back-ropes, jib-traveler, hawse-pipe, forward bell and forward deck-house stove in and started, foremast carried away, port-anchor (about 1,700 pounds weight) carried away and lost, bowsprit and bobstay lanyards, flying and outer jib-pennants, sheets and blocks both sides, jib-boom guys and lanyards, martingale lack-rope lanyards and one port bowsprit-shroud all carried away and lost, lanyards of fore and main rigging port side badly chafed, one chain shank-painter, ring-stopper, and cat-chain carried away and lost, cabin, cabin-furniture, mattress, bed-clothes, carpets, charts, wearing apparel, dishes, cutlery, flags, tools, and sundry small

stores all more or less damaged or ruined by sea-water and oil; one barrel tar, one-half barrel paint-oil, fifteen gallons pine-oil, six capstan-bars, nineteen pounds paints, twelve paint-brushes, three chain-hooks, six corn-brooms, one force-pump, hose, and two cork-fenders all lost; also one barrel kerosene oil, five deck-buckets, one saw and axe,
146 and twelve pounds tallow lost, two and one-half coils rope, five coils seizing stuffs, lead-lines, one new forestay and fore-stay-sail, awning, canvas, boat-sails, twine, spare rope all more or less damaged by sea-water and oil, cooking utensils in galley all more or less damaged by sea-water and jib and flying-jib torn.

We further certify that, in our judgment, said losses and damages were caused by the collision aforesaid.

We recommend that all plank, clamps, rails, water-way, and plank-sheer stove in, broken, or crushed, be taken out from butt to butt, or scarf to scarf, and replaced by new, the metal taken off to be replaced by new, new foremast, the cabin to be cleaned, painted, varnished, and polished as before, that all the above-enumerated articles lost, be replaced by new, that the damages be repaired where practicable, or replaced by new where necessary, that all the repairs shall be fastened and finished as before, the vessel to be cleaned of mud and dirt and re-salted, the new work to be scraped, and that she be painted as before. The cargo discharged to be reloaded, and the vessel to proceed on her voyage of destination.

We further recommend that all old material remaining after repairs and that damaged and unfit for its proper use, be sold at public sale for the benefit of those concerned.

GEORGE T. HEWITT.

Witness our hands, this 24th day of October, 1874.

JAMES ROWLAND.
JOHN GALLAGHER.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

On this 29th day of October, A. D, 1874, in open district court of the United States, in and for said district, personally appeared the above-named John Gallagher, James Rowland, and George T. Hewitt, and being respectively sworn or affirmed, did say, that the survey set forth in the foregoing return, was made according to the best of deponent's skill and judgment, and that the facts therein stated are just and true.

Witness my hand at Philadelphia, the day and year aforesaid.

AARON S. SWARTZ,
Pro. Clerk District Court, U. S.

UNITED STATES,
Eastern District of Pennsylvania, ss:

I certify the foregoing to be a true and faithful copy of the record of the district court of the United States, in and for the eastern district of Pennsylvania, in the matter of the special survey of the hull, spars, and rigging of the schooner or vessel called the Allie Bickmore, from Fernandina.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this second day of November, A. D. 1874, and in the ninety-ninth year of the Independence of the said United States.

[L. S.]

AARON S. SWARTZ,
Pro. Clerk District Court, U. S.

147 EXHIBIT S.—E. L. O., June 12, 1875.

[406 Library street. E. H. Bailey, custom-house broker and notary public.]

PHILADELPHIA, *October* 26, 1874.

Sch'r Allie Bickmore and owners to E. H. Bailey, Dr.

To certified copy of extension of protest $7 50

Received payment.

E. H. BAILEY,
Per THORNLEY.

W. H. BICKMORE.

$10.00.] PHILADELPHIA, *Oct.* 31*st*, 1874.

Sch'r A. Bickmore and owners to propeller M. D. Wheeler, Dr.

For towing from Byerley's ship-yard to Donelson's wharf and to Byerley's $10 00

Received payment.

JAS. W. HOOVER.

Approved by W. H. Bickmore.

EXHIBIT T.—E. L. O., June 12, 1875.

PHILADELPHIA, *Oct.* 31*st*, 1874.

Sch'r Allie Bickmore and owners to J. P. Donaldson, Dr.

[Hard-wood lumber-yard and wharf, foot of Plum street, Kensington. Wharfage solicited.]

15 days' wharfage disch'g Y. pine, at $3 ..... $45 00

Received payment.

J. P. DONALDSON.

EXHIBIT U.—E. L. O., June 12, 1875.

PHILADELPHIA, *Oct.* 31*st*, 1874.

Sch'r Allie Bickmore and owners to J. P. Donaldson, Dr.

[Hard-wood lumber-yard and wharf, foot of Plum street, Kensington. Wharfage solicited.]

Use of shears, making three lifts, at $5 ..... $15 00
Three days' wharfage, at $1.50 ..... 4 50
$19 50

Received payment.

J. P. DONALDSON.

148 EXHIBIT 17.—E. L. O., July 13, 1875.

NEW YORK, *November 2d*, 1874.

Sch'r Allie Bickmore and owners to Hall & Cornish, Dr.

[Shipwrights, caulkers, and spar-makers, yard, 256 South street, opposite sectional dry dock.]

To one foremast, 87½x27	$450 00
" p'd freight on mast to Philadelphia	60 00
" two days' time of W. Hall to Philadelphia	20 00
" Willard Hall's expenses to Philadelphia	12 50
	$542 50

Received payment.
(Duplicate bill.)

EXHIBIT 1.—E. L. O., June 12, 1875.

[To insure prompt attention, all business communications should be addressed to the firm. All claims for damage or short measure must be made within five days after receipt of goods. If goods are short, return memorandum of yds. of each piece. M. Artman, M. K. Treichler, S. S. Swartley. Salesman, Sweeten. Book, 7. Folio 208.]

PHILADELPHIA, *Oct. 31st*, 1874.

Schooner Allie Bickmore bought of Artman, Treichler & Co., wholesale dealers in carpets, oil-cloths, window-shades, door-mats, batting, wadding, tie and wick yarns, cotton yarn, carpet-chain, grain-bags, cordage, brushes, looking-glasses, wooden and willow ware, &c., 219 North Third street, above Race; terms net 30 days, payable with exchange on Philadelphia:

22 5-36 yds. tapestry	$1 25	$27 67	
13½ yds. sheeting	1 10	14 66	
4¼ yds. 6-4 floor O. C	90	3 83	
3 17-36 yds. 8-4 "	1 20	4 17	
Seymour's bill		6 25	
3 velvet rugs	2 00	6 00	
			$62 59

11–3–74.
Received payment.

ARTMAN, TREICHLER & CO.

(Duplicate.)

149 EXHIBIT 2.—E. L. O., June 12, 1875.

PHILADELPHIA, *November 2d*, 1874.

Schooner Allie Bickmore and owners to Darrah & Elwell, Dr.

[John C. Darrah, Joseph S. Elwell, ship chandlers and grocers, 512 and 514 South wharves.]

Oct. 7	6 coil seizing, 96 yds	18c..	$17 28	25 yds. parcelline	20..	7 50	$24 78
"	½ coil ratline, 56 yds	13c..	7 28	1 can tar		85	8 13
"	½ coil Hambro line, 26 yds	18..	4 68	48 ft. 3-in. gal. wire rope, 68	16..	10 88	15 56
8	1 can tar		85	58 ft. 2½ in. gal. wire rope, 56	16½..	9 24	10 09
"	2 dead-eyes	60-72..	1 32	31 seizing	18..	5 58	6 90
10	16 hemp rope	13..	2 08	5 yds. parcelline	30..	1 50	3 58
"	14 marline	18..	2 52	204 bushels salt	30..	61 20	63 72
14	300 bls. T. I. salt	30..	90 00	1 wood-stock anchor, 1,700 lbs	8..	136 00	226 00
21	75 " "	30..	22 50	Cartage on anchor		2 50	25 00
28	2 doz. knives & forks	2.25..	4 50	2 balls wick	12½..	25	4 75
"	½ doz. teaspoons		37	3 corn brooms	37½..	1 13	1 50
"	½ " table "		75	1 water-pitcher		75	1 50
"	1 doz. wine glasses		1 87	1 meat-dish		1 00	2 87
"	1 whisk broom		50	1 wood-saw		1 25	1 75
29	3 doz. wick	25..	75	50 feet hose	50..	25 00	25 75
"	1 coil ratline, 73 yds	13..	9 49	1 patent scrub-handle		38	9 87
"	1 coil spun-yarn, 62 yds	13..	8 06	1 broad-axe		2 87	10 93
"	¼ coil Hambro line, 12 yds	18..	2 16	12 lbs. tallow	13..	1 56	3 72
"	3 deck-buckets	1.25..	3 75	2 scrapers	75..	1 50	5 25
"	2 cork-fenders	4.75..	9 50	6 capstan-bars	1.25..	7 50	17 00
"	1 screw-driver		50	10 lbs. cut nails	6½..	65	1 15
"	1 flat file		1 12	1 16-ft. oar	10..	1 60	2 72
"	1 deep-sea line, 35 yds	45..	15 75	¼ barrel tar		1 75	17 50
"	½ doz. corn brooms	4.50..	2 25	1 claw-hammer		1 00	3 25
"	4 flat brushes	1.25..	5 00	4 balls whipping-twine	50..	2 00	7 00
"	1 pencil brush		25	2 doz. sail-needles	37½..	75	1 00
"	1 sash-brush		30	2 papers copper tacks	75..	1 50	1 80
"	3 seam-brushes	25..	75	1 log-book		2 50	3 25
"	3 round brushes		2 75	1 brass swing-lamp		2 00	4 75
"	1 Bath brick		06	5 gals. burn. oil	1.15..	5 75	5 81
"	1 burgee		20 00	10 lbs. tallow	13..	1 30	21 30
"	1 gal. pine oil	50..	7 50	9 lbs. pump-leather	46..	4 14	11 64
"	4 gals. tar oil	50..	2 00	½ coil 9-in. ratline, 19 lbs	13..	2 47	4 47
"	5 yds. cotton duck	28..	1 40	½ coil 9-in. seizing, 11 lb	18..	1 98	3 38
"	100 fms. 4-in. hemp rope	485 13..	63 05	½ coil 2-gr. spun-yarn, 38 lbs	13..	4 94	67 09
"	20 fms. 3-in. "	40, 13..	5 20	¼ coil marline, 10 lbs	18..	1 80	7 00
				½ coil 15-in. ratline, 36 lb	13..	4 68	4 68
							$637 34

Received payment.

DARRAH & ELWELL.
ERSKINE.

W. H. BICKMORE.

150 EXHIBIT 3.—E. L. O., June 12, 1875.

PHILADELPHIA, *Nov. 2nd*, 1874.

Schooner Allie Bickmore and owners to F. Johnson, Dr.

Repairing one walnut extension table, new poplar bottom and leg	$10 00
6 dining-room chairs	12 00
	$22 00
Cr. by 6 chairs	$3 00
	$19 00

Received payment.

DARRAH & ELWELL.
ERSKINE.

For JOHNSON.

EXHIBIT 4.—E. L. O., June 12th, 1875.

No. .] *Bureau veritas.*

Registre de renseignements sur navires.

Reçu de Capt. W. H. Bickmore la somme de fifteen dollars, pour coût du certificat de visite du navire sch'r Allie Bickmore, Boston, de 390 tonneaux, Capitaine Bickmore, conformément à l'article 31 du règlement.

Philada, le November 2d, 1874.

Pour l'administration.

L'EXPERT.

Certificat F.
Vacations "
Visa " $10
Fr'ghts, survey, 5

$15

Received payment.

JOHN GALLAGHER,
Per G. P. HEWITT.

Bureau veritas (duplicate).

EXHIBIT 5.—E. L. O., June 12th, 1875.

PHILADELPHIA, *Nov. 6th*, 1874.

Sch'r A. Bickmore and owners to George L. Flick, Dr.

[Manufacturer of ship cabooses, cook and cabin stoves; also lanterns, tin, copper, iron, and brass ware for vessels and houses, No. 141 North Front street, above Arch.]

Oct. 31.	1 pair lamp-shears, 60c.; 1 lot blacking, 15c.		75
Nov. 5.	Repairing pipe, 1 galv'd elbow	$2 00	
	Pipe for galley, and collar on do	3 50	
	No. 2 crystal stove	5 00	
	1 wash-bowl	40	
	1 spider	44	
			11 34
			12 09
" 6.	Rep'g cop. boiler, 1 dust-pan, and 2 lamps		75
			12 84
	Cr. by stove ret'd		5 00
			$7 84

Received payment.

GEO. L. FLICK,
By T.

(Duplicate.)

151 EXHIBIT 6.—E. L. O., June 12th, 1875.

PHILADELPHIA, *November 6th*, 1874.

Sch'r Allie Bickmore and owners to Darrah & Elwell, Dr.

[John C. Darrah, Joseph S. Elwell, ship chandlers and grocers, 512 and 514 South wharves.]

Oct. 29.	1 hair mattrass	$14 00	
" "	2 large iron cans, $1.75, $1.25	3 00	
" "	20 Manila lines, at 16c	3 20	
" "	1 1-gal. tin can	50	
" "	1 2-gal. demijohn	75	
" "	2 pr. sister hooks	1 75	
" "	35 fms. 3-in. Manila rope, 62, 15c	9 30	
" "	1 doz. lamp chimneys	1 20	
			$33 70

Received payment.

DARRAH & EWELL.
ERSKINE.

W. H. BICKMORE.

EXHIBIT 7.—E. L. O., June 12th, 1875.

PHILADELPHIA, *Nov. 6th*, 1874.

Sch'r Allie Bickmore and owners to Stevens & Miller, Dr.

To repairing flying-jib and making and fitting on mast coat, 4½ days' work, at $3 50-100 per day	$15 75	
31½ yds. cotton duck No. 4, at 36c. yd	11 34	
3½ " " " 1, 41c	1 43	
5 lbs. rope, at 18c. lb	90	
1 lb. twine	48	
28 ft. strip lead, at 4c. ft	1 12	
¼ lb. galvanized tacks	13	
Porterage	4 00	
To making a standing jib and furnishing rope, thimbles, clew, and twine	50 14	
218 yds. No. 0 cotton duck, 43c. yd	93 74	
	$179 03	
By old jib, valued	15 00	
	$164 03	

Received payment in full.

STEVENS & MILLER.

152 EXHIBIT 8.—E. L. O., June 12, 1875.

Received, Philadelphia, Nov. 7, 1874, from Capt. W. H. Bickmore, fifty dollars, for twenty-five nights' watching, at $2 per night (on schooner Allie Bickmore).
$50.00.] FRANK CHANDLER.

EXHIBIT 9.—E. L. O., June 12th, 1875.

PHILADELPHIA, *Nov. 7th*, 1874.

Sch'r Allie Bickmore and owners to Thomas Cutler & Son, Dr.

[Riggers, Nos. 512 and 514 South wharves, third story.]

			Days, at $4.00 per day.	
Sept.	30.	To send'g down topmast, 1 rigger & boy	5	$20 00
"	"	" services	1	4 50
"	"	" hang. rigg. to loft, rigg. loft		4 50
Oct.	1.	" tak'g out mast and bowsprit, 1 gang	7	28 00
		" services	1	4 50
	2.	" pil'g rigg. away in loft	¾	3 00
		" insurance on rigg		4 50
	8.	" to refit'g stays and rigg	2¾	11 00
		" services	¾	3 38
	9.	" work at rigg. and stays	2	8 00
		" services	½	2 25
	21.	" put'g in bowsprit	3	12 00
		" services	1	4 50
		" hang. 2 loads of gear		3 50
		" use of blocks and falls for bowsprit		6 00
	31.	" putting in mast	6½	26 00
		" services	½	2 25
		" hang. rigg. to vessel		4 00
Nov.	2.	" set'g up rigg., stays, &c	5	20 00
		" services	1	4 50
	5.	" set'g up rigg	5	20 00
		" services	1	4 50
				$200 88
		" bend'g sail, as per contract		20 00
				220 88

Received payment.

THOS. CUTLER & SONS.

153 EXHIBIT 10.—E. L. O., June 12, 1875.

PHILADELPHIA, *November* 7, 1874.

Schooner Allie Bickmore and owners to Joseph Ellis and James D. Gibson, Dr.

For 8½ days' labor, at $2.00, to help salt vessel $17 00

Received payment.

JOSEPH ELLIS.
JAMES D. GIBSON.

EXHIBIT 11.—E. L. O., June 12, 1875.

[Established 1854.]

PHILADELPHIA, *November 9th*, 1874.

Schooner Allie Bickmore and owners to Samuel P. Pedrick, Dr.

[Ship chandler and grocer, 318 and 320 South wharves.]

For storage and cartage on materials saved $6 50

Received payment.

SAMUEL P. PEDRICK.
WM. H. BALLS.

EXHIBIT 12.—E. L. O., June 12, 1875.

PHILADELPHIA, *Nov. 9th*, 1874.

Sch'r Allie Bickmore and owners to Michael Snee, Dr.

[Ship, house, and sign painter, No. 754 South Front street.]

Sept.	12.	To 2¾ days' work, $3.50		$9 62
"	14.	" 1 " "		3 50
"	15.	" 1 " "		3 50
Oct.	3.	" 3 " "		10 50
"	"	" 41 lbs. colors		8 20
"	"	" 4 sheets sand-paper		08
"	5.	" 37 lbs. color		7 40
"	"	" 1 quart varnish, $3.75		94
"	"	" 5 lbs. pumice-stone		75
"	"	" 3 days' work		10 50
"	"	" 2 lbs. white-lead putty		24
"	"	" 3 days' work		10 50
		" 7. " 2¾ days' "		9 62
154	Oct.	7. To 3 gals. turpentine		$2 10
	"	8. " 4 lbs. white-lead putty		48
"	6.	" 2 lbs. white-lead putty		24
"	"	" 1 day's work		3 50
"	12.	" 3 gals. varnish		11 25
"	"	" gilding stern		24 00
"	13.	" 3 days' work		10 50
"	"	" 60 lbs. color		12 00
"	14.	" 2 days' work		7 00
"	"	" 2½ gals. China gloss		6 25
"	16.	" 1 day's work		3 50
"	17.	" 2 " "		7 00
"	19.	" 2 " "		7 00
"	"	" 5½ gals. oil, $1.00		5 50
"	21.	" 1½ days' work		5 25
"	22.	" 1½ gals. oil		11 50
"	"	" ¼ day's work		87
"	23.	" 3 quarts oil		75
"	"	" 23 lbs. lead color		4 60
"	"	" 50 lbs. red-lead putty		5 00
"	"	" 2 days' work		7 00

"	26.	" 2 " "	7 00
"	27.	" 3 " "	10 50
"	"	" 104 lbs. color	20 80
"	28.	" polish for cabin	1 50
"	"	" 2 gals. oil	2 00
"	"	" 2 days' work	7 00
"	29.	" 259 lbs. color	51 80
"	"	" 2 lbs. Prussian blue	1 75
"	"	" 6½ days' work	22 75
"	30.	" 6¾ " "	23 62
"	"	" ½ gal. varnish	1 87
"	"	" 18 lbs. putty, common, 6 cts	1 08
Nov.	4.	" 8 days' work	28 00
"	"	" gilding head and caps on cabin	20 00
"	5.	" 1¾ days' work	6 12
			$416 19
Nov.	5.	Cr. by 26 lbs. color returned	5 20
			$411 99
Nov.	12.	" 85 " "	17 00
			394 99
		Less five per cent	19 74
			$375 25

Received payment.

MICHAEL SNEE,
Per M. S., JR.

155 EXHIBIT 13.—E. L. O., June 12, 1875.

PHILADELPHIA, *November* 19, 1874.

Schooner Allie Bickmore and owners to Darrah & Elwell, Dr.

[John C. Darrah, Joseph S. Elwell, ship chandlers and grocers, 512 and 514 South wharves.]

10 lbs. oakum, 11c	$1 10
Cash paid telegram	50
	$1 60

Received payment,

DARRAH & ELWELL.
ERSKINE.

EXHIBIT 14.—E. L. O., June 12, 1875.

NEW YORK, *December*, 1874.

Schooner Allie Bickmore, Messrs. H. W. Loud & Co., to Jones & Whitlock, No. 51 Wall street

1874.

Dec.	17.	To statement of general average $875 00
"	"	" " " " partial loss 75 00
		$150 00

Received payment.

JONES & WHITLOCK,
Per THOS. COMESKEY.

EXHIBIT 15.—E. L. O., June 12, 1875.

Whereas the owners of the schooner Allie Bickmore, on the 27th day of April, 1874, entered into a charter-party with the St. Mary's River Lumber Company for three successive voyages from Woodstock Mills, St. Mary's River, to New York;

And whereas on the second of said voyages the said schooner was run into by the steamship New Orleans, and sought a port of safety and repair in the port of Philadelphia, and to facilitate the speedy delivery of the cargo on board said schooner, it has been agreed by the said owners of the said schooner and said St. Mary's Lumber Company as follows:

The schooner Allie Bickmore accepts for the freight of said lumber $10 per thousand feet, less $648 (estimated general average expenses), and delivers the cargo to the St. Mary's River Lumber Company at Philadelphia, and hereby gives up any claims against cargo in nature of general average; said vessel to have the privilege of going back on her third voyage to said Woodstock Mills from Philadelphia direct, after making the necessary repairs (provided such repairs are
156 completed within sixty days from the date hereof), instead of proceeding to New York and taking outward cargo as per condition of charter-party. Other conditions of said charter-party to remain the same.

The St. Mary's River Lumber Company accepts cargo at Philadelphia, and agrees to pay $2,732 (being ten dollars per thousand feet for the freight on said lumber, less the $648 item above mentioned), within three days from the date hereof, failing in which this agreement to be null and void, reships cargo at their own expense, waives all general average claims against the vessel, and pays all charges on lumber after it is discharged from the Allie Bickmore.

The Boston Marine Insurance Company pays to the St. Mary's River Lumber Company the actual damage done by wet and dirt to cargo as it now lies at Philadelphia, and 39-60ths of $453.50, and receives release of all claims under policy.

In witness whereof the said parties have hereunto set their hands and seals this 25th day of September, 1874.

H. W. LOUD & CO.,
Agents for Master of Sch. Allie Bickmore.
F. D. WHITING,
Gen'l Sup't St. M. R. L. Co.
BOSTON MARINE INS. CO.,
By GEO. H. STETSON, *Manager.*

EXHIBIT 16.—E. L. O., June 12, 1875.

[H. W. Loud & Co., shipping commission merchants, 28 South street, New York.]

This charter-party, made and concluded upon in the city of New York, the 27th day of April, 1874, between Wm. H. Bickmore, agent of the schooner Allie Bickmore, of Boston, of the burthen of 396 tons, or thereabouts, register measurement, now lying in the harbor of Cardenas, of the first part, and the St. Mary's River Lumber Company of the second part, witnesseth: That the said party of the first part agrees in the freighting and chartering of the whole of the said vessel (with the exception of the cabin, and necessary room for the crew, and storage of provisions, sails, and cables) unto said party of the second part, for

three successive voyages from Woodstock Mills, St. Mary's River, to New York, the vessel not to leave New York on the first trip within fifteen days from date. Vessel to move once for discharging at New York, if necessary, by charterers paying towage, on the terms following: The said vessel shall be tight, staunch, strong, and every way fitted for such a voyage, and receive on board, during the aforesaid voyage, the merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish the said vessel
157 a full and complete cargo under and upon deck of yellow-pine resawed lumber, sufficient short lumber and boards for stowage each trip, and to pay to said party of first part or agent, for the use of said vessel during the voyage aforesaid, ten dollars ($10) per thousand feet, superficial freight survey, for all delivered, payable upon proper delivery of cargo at port of discharge on each trip.

It is agreed that the lay days for loading and discharging shall be as follows (if not sooner dispatched), commencing from the time the vessel is ready to receive or discharge cargo. For loading at Woodstock, not less then twenty thousand (20) feet per running day (Sundays excepted) the first trip, and twenty-five thousand per running day (Sundays excepted) the two following trips, and prompt dispatch for discharging each cargo at New York. And that for each and every day's detention by default of said party of the second part, or agent, fifty ($50) per day, day by day, shall be paid by said party of the second part, or agent, to the said party of the first part, or agent. The cargo or cargoes to be received and delivered alongside, within reach of the vessel's tackles, vessel to lay one fair day for outward freight for charterers, charterers paying all expenses for loading and discharging, or other expenses pertaining to shipment of same, and the said outward freight to be free to be landed at Woodstock Mills. The dangers of the seas and navigation of every nature and kind always mutually excepted. A commission of five per cent. upon the amount of this charter, primage, and demurrage, payable by the vessel, due to H. W. Loud & Co., on signing hereof.

To the true and faithful performance of all and every of the foregoing agreement we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, and also the said vessel's freight, tackles, and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of estimated cost claimed.

In witness whereof we hereunto set our hands the day and year first above written.

W. H. BICKMORE.
ST. MARY'S RIVER LUMBER CO.
S. E. FITCH,
General Manager,
Per W. L. DITSWORT.

Signed in the presence of—
EDWARD H. LOUD.

158 *Exhibit* 4, *for identification.—E. L. O., Sept.* 8, 1875.

Schooner Allie Bickmore and owners to Birely, Hillman & Streaker, Dr.

[Beach and Warren streets (18th ward), Kensington, ship-builders.]

1874.

Oct. 3.	To 40¼ days' work, at $4.00	$161 00	
3. "	12 " 2.25	27 00	
			$188 00

10	" 149½	"	4.00	598 00	
10	" 6	"	2.00	12 00	
10	" 14¼	"	3.00	42 75	
10	" 11	"	2.25	24 72	
					677 50
10	" sawing timbers and plank			33 50	
10	" 104 wedges, at six cents			6 24	
					39 74
	Amount carried forward				905 24
	Amount brought forward				$905 24

1874.

Oct. 17.	To sawing plank, knees, timbers, &c.			$36 00	
17.	" 173 days' work, at $4.00			692 00	
17.	" 6	"	2.00	12 00	
17.	" 41	"	3.00	123 00	
17.	" 12	"	2.25	27 00	
					890 00
17.	" 40 lbs. of iron wedges, at 15 cts			$6 00	
17.	" 3 spike-pouches, at 50 cts			1 50	
17.	" 14 lbs. of reaming-irons, at 15 cts			2 10	
17.	" 1 cold chisel			50	
17.	" 4 steel bolt pouches, at $1.00			4 00	
17.	" 3 lbs. of steel drift-bolts, at 25 cts			75	
17.	" 405 lbs. of spikes, at 10 cts			40 50	
17.	" 161 lbs. of bolts, at 8 cts			12 88	
17.	" 160 lbs. of ¾ bolts headed, at 10 cts			16 00	
17.	" 50 lbs. ⅞ bolts, at 8 cts			4 00	
17.	" 341 lbs. of galvanized spikes, at 13 cts			44 33	
17.	" 52 lbs. of yellow-metal bolts, at 35 cts.			18 20	
17.	" 8 lbs. galv. bolts, at 11 cts			88	
17.	" 4 lbs. chain-hook, at 12½ cts			50	
17.	" 192 1-inch saucer-rings, at 3 cts			5 76	
17.	" 34 auger-wilds, at 10 cts			3 40	
17.	" 7 lbs. of iron added, at 7 cts			49	
	Amounts carried forward			161 79	
					1,795 24

159 1874.

	Amounts brought forward			$161 79	
Oct. 17.	To 60 hours, two hands and one fire, repairing bolts, spikes, and other iron-work, at 90 cts			54 00	
					$215 79
19.	" hauling out on railway 390 tons, at 15 cts			$58 50	
19.	" eleven days' railway hire, at $29.25			324 40	
					383 00
22.	" 81 lbs. of composition spikes, at 30 cts.			$24 30	
22.	" 116 wedges, at 6 cts			6 96	
22.	" 49 hutchies, at 6 cts			294	
					34 20
22.	" 3 inch augers, at $1.30			$3 90	
22.	" 4 5-8 augers, at $1.00			4 00	
22.	" 2 8-9 augers, at $1.50			3 00	

22.	" 2 6½-8 augers, at $1.15		2 30	
22.	" 138 feet of oak harpen, at 6½ cts		2 47	
22.	" 100 feet of oak ribbands, at 6 cts		6 00	
22.	" 200 feet of oak shores, at 6 cts		12 00	
22.	" 2,509 feet of oak timbers, at 6 cts		150 54	
22.	" 3,300 feet of yellow pine bilge streaks, at 6 cts		198 00	
22.	" 36 feet of keelson, at 6¼ cts		2 34	
22.	" 364 feet of yellow-pine bulwarks and stringers, at 6 cts		21 84	
				406 39
	Amount carried forward			$2,834 62
1874.	Amount brought forward	2,834 62		
Oct. 22.	To 662 feet of yellow-pine ceiling, at 6 cts.	$39 72		
22.	" 48 feet of yellow-pine, at 6 cts	8 88		
22.	" 147 feet of yellow-pine water-way, a 6c.	2 82		
22.	" 1,145 feet of yellow-pine clamps, at 6 cts.	68 70		
22.	" 126 feet of oak post sills, at 6½ cts	8 19		
22.	" 55 feet of oak post shutter, at 6½ cts.	3 58		
22.	" 60 feet of yellow pine for post, at 6 cts.	3 60		
22.	" 225 feet of yellow pine for traveler, 6 cts	13 50		
22.	" 1,277 feet of oak pointers and braces, 6½c	83 01		
22.	" 58 feet of oak chock on rail, at 6½ cts.	3 77		
22.	" 639 feet of oak rail, at 6½ cts	41 54		
22.	" 219 feet of oak bits, at 6½ cts	14 24		
				291 55
22.	" 113 treenails, 20-inch, at 6 cts	6 78		
22.	" 583 treenails, 26-inch, at 7 cts	40 81		
22.	" 387 treenails, 24-inch, at 7 cts	27 09		
22.	" 48 treenails, 22-inch, at 6 cts	2 88		
	Amounts carried forward	$77 56		3,126 17

1874.				
	Amounts brought forward	$77 56		$3,126 17
Oct. 22.	To 40 white-pine ceiling-wedges	40		
22.	" one 8-inch hackmatack knee for breast-hook	8 00		
22.	" 80 feet of yellow pine for breast-hook, at 6 cts	4 80		
22.	" 1,677 feet of yellow-pine deck-frame, at 6 cts	100 62		
22.	" 28 feet of oak sills, at 6½ cts	1 82		
22.	" 170 feet of yellow-pine cross-rail on forecastle, at 6 cts	10 20		
22.	" 28 feet of oak for windlass, at 6½ cts.	1 82		
				205 22
22.	" 196 feet of oak anchor-stock, at 6½ cts.	$12 74		
22.	" 221 feet of oak for shoot, at 6½ cts	14 36		
22.	" 23 feet of yellow-pine, at 6 cts	1 38		
22.	" 68 feet of oak scuttle, at 36½ cts	4 42		
22.	" one 10-inch oak knee for bits	8 00		

22.	" one 9-inch oak knee for bits.....	7 00		
22.	" four 4-inch hackmatack knees for house, at $2.50.....	10 00		
22.	" four 5-inch hackmatack knees for house, at $3.50.....	14 00		
22.	" two 4-inch hackmatack knees, at $2.50	5 00		
			76 90	
	Amount carried forward.....			$3,408 29
1874.	Amount brought forward.....			$3,408 29
Oct. 22.	To 195 feet of oak for cathead, at 6½ cts.	$12 67		
22.	" 333 lbs. of spun oakum, at 14 cts....	46 62		
22.	" 1,200 treenail wedges, at 2 cts.....	2 40		
22.	" two lbs. of galvanized cut nails, at 11 cts.....	22		
22.	" 3,568 feet of deck plank, at 6 cts.....	214 08		
22.	" 300 large spikes, at 2 cts.....	60		
22.	" four 8-inch hac'matack knees, at $8....	32 00		
22.	" seven 7-inch " " at $7....	49 00		
22.	" one 6-inch " "	4 50		
22.	" three 4-inch " " at $2.50.	7 50		
22.	" 3,599 feet of yellow-pine plank, at 6 cts.	215 94		
22.	" 260 feet of yellow-pine windlass bed, at 6 cts.....	15 60		
22.	" 346 feet of yellow-pine water-way, at 6c.	20 76		
22.	" 294 feet of oak pall-bit, at 6½ cts....	19 11		
22.	" 220 feet of yellow-pine forecastle beams, at 6 cts.....	13 20		
22.	" 20 feet of oak chock or knees, at 6½ cts.....	1 30		
22.	" 30 feet of oak post, at 6½ cts.....	1 95		
22.	" 201 feet of yellow-pine bulwarks....	12 06		
	Amounts carried forward.....	$669 51		$3,408 29
161 1874.	Amounts brought forward....	$669 51		$3,408 29
Oct. 22	To 247 feet of white-pine bowsprit bed, at 5½ cents.....	13 59		
22.	" 4½ lbs. sheet lead, bowsprit, at 12 cts.....	54		
22.	" 32 lbs. sheet lead, hawser-pipe, at 12 cts.....	3 84		
22.	" 3 lbs. of yellow-metal nails, hawser pipe, at 30 cts.....	90		
22.	" 2 days' time fixing, at $3.50.....	7 00		
22.	" 887 lbs. of yellow-metal sheathing, at 25 cts.....	221 75		
22.	" 11 lbs. of yellow-metal nails, at 30 cts.	3 30		
24.	" 145¾ days' work, at $4.00.....	583 00		
24.	" 12 days' work, at $2.25.....	27 00		
24.	" 14¾ days' work, at $3.00.....	44 25		
24.	" sawing rails, chocks, knees, &c.....	22 25		
24.	" 8 wedges, at 6 cts.....	48		
24.	" 8 lbs. of strap and bolt for mast-head, at 15 cts.....	1 20		
24.	" 10 lbs. of eyebolts, at 15 cts.....	1 50		

24.	"	18 lbs. of ¾-inch Norman bolts, at 15 cts		2 70	
24.	"	6 lbs. of wedges, at 15 cts		90	
24.	"	28 lbs. of bands, at 15 cts		4 20	
					1,607 91
24.	"	2 split keys		25	
24.	"	6 lbs. of countersunk bolts for hawser pipe, at		60	
		Amounts carried forward		$80 85	$5,016 20
1874.		Amounts brought forward		$80 85	5,016 20
Oct. 24.	To	2½ hours' time, 2 hands and a fire, and for repairing eyebolts and screw-bolts, at 90 cts		2 25	
24.	"	11⅜ pins, 2½ inches long, at 8 cts		88	
24.	"	7 lbs. ⅜ C. S. nails, at 25 cts		1 75	
24.	"	70 lbs. spikes, at 10 cts		7 00	
24.	"	766 lbs. of bolts, headed, at 8 cts		61 28	
24.	"	309 saucer rings, at 3 cts		9 27	
24.	"	137 lbs. of galvanized spikes, at 13 cts.		17 81	
24.	"	36 lbs. of post plates, at 15 cts		5 40	
24.	"	3 lbs. of nails, at 25 cts		75	
24.	"	6 lbs. dogs for windlass, at 15 cts		90	
24.	"	1¼ hours' time cutting and welding windlass bands, 2 hands, at 90 cts.		1 12	
24.	"	1½ hours' time, 2 hands, piecing traveler ring, at 90 cts		1 35	
24.	"	2 lbs. of iron added, at 7 cts		14	
24.	"	2 1-inch eyebolts in it, at 25 cts		50	
24.	"	1 hours' time working on band		90	
24.	"	½ day's time repairing screw and ring bolts (2 men and fire)		4 50	
		Amounts carried forward		$116 65	$5,016 20
162 1874.		Amounts brought forward		$116 65	$5,016 20
Oct. 24.	To	2 lbs. washers, at 12½ cts		25	
24.	"	21 lbs. of plates for traveler, at 15 cts.		3 15	
24.	"	1 1¼-inch nut		15	
					126 20
29.	"	24 lbs. of lead pipe for scuppers and wash-basin supply, at 12 cts		$2 88	
29.	"	1 day's time		3 50	
29.	"	1 lb. of yellow-metal nails for scuppers		30	
29.	"	83 lbs. of yellow-metal nails, at 30 cts.		24 90	
29.	"	½ gallon of paint oil, at 90 cts		45	
29.	"	1 bbl. of pitch		6 00	
29.	"	2 gallons of oil, at $1.50		3 00	
29.	"	2 mops, at 75 cts		1 50	
29.	"	10 lbs. spun oakum, at 14 cts		1 40	
29.	"	use of steam stove for steaming plank		25 00	
29.	"	½ paper of sprigs		15	
29.	"	scraping pitch		7 00	
29.	"	one 5-inch hackmatack knee for rails.		3 50	

	29.	" one turned stanchion, yellow pine....		37	
	29.	" 20 feet of white-pine boards, at 5 cts.		1 00	
	29.	" 169 feet of yellow-pine chain rack, at 6c.....		10 14	
		Amounts carried forward.....		$91 09	$5,136 40
1874.		Amounts brought forward....		$91 09	$5,136 40
Oct.	29.	To 515 feet of oak rail chocks, at 6½ cts..		33 48	
	29.	" 312 feet of oak bow chocks.....		20 28	144 85
	29.	" 253 feet of yellow-pine bulwarks, at 6 cts.....		15 18	
	29.	" 40 feet of yellow-pine backing knees, at 6 cts.....		2 40	
	29.	" 78 feet of oak gaff jaws, at 6½ cts....		5 07	
	29.	" 12 feet of oak anchor fender, at 6½ cts.		78	
	29.	" 72 feet of oak anchor stock, at 6½ cts.		4 68	
	29.	" 56 feet of yellow-pine cross-piece bow, at 6 cts.....		3 36	
	29.	" 10 feet of yellow-pine for joiners, at 6c.		60	
	29.	" 84 feet of oak for shoot, at 6½ cts....		5 46	
	29.	" 28 feet of yellow-pine hatch for house, at 6 cts.....		1 68	
	29.	" 23 feet of oak mast bolsters, at 6½ cts.		1 50	
	29.	" 15 20-inch treenails, at 6 cts.....		90	
	29.	" 1 4½-8 auger.....		90	
	29.	" 74 lbs. of spun oakum, at 14 cts.....		10 36	
	29.	" 25⅜ deck plugs, at 2 cts.....		5	
	29.	" 2 lbs. of cut nails, at 8 cts.....		16	
		Amounts carried forward.....		$53 08	$5,281 25
163	1874.	Amounts brought forward.....		$52 08	$5,281 25
	Oct. 29.	To 2 papers of brass escutcheon nails, at 87½ cts.....		1 75	
	29.	" ½ lb. of cotton for top of house, at 30 cts.....		15	
	29.	" 6 days' work, 2 24, at $2.00.....		12 00	
					66 98
	29.	" 45 3-5 gallons of linseed oil, at 90 cts.		$41 04	
	29.	" hauling linseed oil.....		1 00	
	29.	" 1 barrel linseed.....		1 50	
					43 54
	29.	" 14½ hours, blacksmith and two helpers, iron for lumber posts, at $1.50.		$21 75	
	29.	" 2½ hours, drill iron for lumber.....		1 50	
	29.	" 314 lbs. of boiler iron for lumber, at 9c.		28 26	
	29.	" ½ hours' time cutting screw-bolts, at 80c.....		40	
	29.	" 2½ hours' time planing chock for bow, at 80 cts.....		2 00	
					53 91
	30.	" 2 new windlass jackets, fittings and patterns.....		25 20	
	30.	" 5 chocks and 2 cat faces, 500 lbs. at 6c.....		30 00	

	30.	"	48 hours' pattern work or chocks, at 40c	19 20	
	30.	"	2 hours' pattern work on cat faces, at 40c	80	
			Amounts carried forward	$875 20	$5,445 68
1874.			Amounts brought forward	$875 20	$5,445 68
Oct.	30.	To	18 feet of lumber for patterns, at 10 cts	1 80	
	30.	"	1 roller, 3 lbs., at 6 cts	18	
	30.	"	punching 128 sheets of Y. metal	1 28	
	30.	"	12¼ days' work, at $2.25	27 56	
	30.	"	12 days' work, at $3.00	36 00	
	30.	"	6 days' work, at $2.00	12 00	
					154 02
	31.	"	185½ days' work, at $4.00	742 00	
	31.	"	sawing	3 50	
	31.	"	88 lbs. of bolts, headed, at 10 cts	8 80	
	31.	"	21 lbs. of galvanized C. S. nails, at 25c	5 25	
	31.	"	21 lbs. of galvanized links and bolts, at 18 cts	3 78	
	31.	"	41 lbs. of galvanized C. S. bolts for chocks, at 13 cts	5 33	
	31.	"	25 lbs. of galvanized bolts and plates, at 18 cts	4 50	
	31.	"	39 lbs. of galvanized ring-bolts, at 18c	7 02	
	31.	"	20 lbs. of dead-eye straps, at 15 cts	3 00	
	31.	"	7 lbs. of galvanized plates for cat-head, at 18 cts	1 26	
	31.	"	108 lbs. of shank, painter and ring stopper, at 10 cts	10 80	
	31.	"	48 lbs. of anchor-stock banks, at 15cts	7 20	
			Amounts carried forward	$802 44	$5,599 70
164 1874.			Amounts brought forward	$802 44	$5,599 70
Oct.	31.	To	24 lbs. of eyebolts, at 15 cts	3 60	
	31.	"	18 lbs. of plates, at 15 cts	2 70	
	31.	"	8 lbs. of 1⅛-inch bolts for cathead, at 10 cts	80	
	31.	"	1½ hours' time on band 2 hands, at 90c	1 35	
	31.	"	1 lb. of iron added	7	
	31.	"	repairing monkey-wrench	50	
	21.	"	18 split keys, at 10 cts	1 80	
	31.	"	9 auger welds, at 10 cts	90	
	31.	"	15 saucer rings, at 3 cts	45	
	31.	"	1 nail punch	20	
	31.	"	1 band for bobstay	75	
	31.	"	8 lbs. of spikes, at 10 cts	80	
	31.	"	1 1-inch tackle-hook	60	
					816 96
	31.	"	1¾ hours' time straightening gudgeon, at 90 cts	1 58	

	31.	" 24 lbs. of plates and nails, at 15 cts..	3 60		
	31.	" 5½ lbs. of C. S. nails, at 20 cts.....	1 10		
	31.	" 1 1-inch nut.....	15		
	31.	" 31 lbs. of angle plates for cathead, at 15c.....	4 65		
	31.	" 4 lbs. of galvanized C. S. nails, at 25 cts.....	1 00		
	31.	" 30 lbs. of shackle for anchor, at 15 cts.	4 50		
		Amounts carried forward.....	$16 58	$6,416 66	
1874.		Amounts brought forward....	$16 58	$6,416 66	
Oct.	31.	To 3½ hours' time making flange iron for rail, at 90 cts.....	3 15		
	31.	" 38 lbs. of flange iron for chock, at 12 cts.....	4 56		
	31.	" 3 lbs. of 2½-inch C. S. nails for chock, at 22 cts.....	66		
	31.	" 1 hour's time drilling and C. S. nails for chock.....	60		
	31.	" galvanizing 41 lbs., at 3 cts.....	1 23		
	31.	" 2 hours' time repairing with, at 90 cts.....	1 80		
	31.	" 5½ lbs. of iron added, at 7 cts.....	38		
	31.	" galvanizing 554 lbs. of iron chock, at 3c.....	16 62		
	31.	" 2 1⅝-inch washers, at 6 cts.....	12		
	31.	" 1 1⅛-inch saucer ring.....	4		
	31.	" 1 1-inch saucer ring.....	4		45 78
	31.	" 1 ⅞-inch saucer ring.....	4		
	31.	" 1 hour on brails.....	60		
	31.	" 1 ½-inch nut.....	10		
	31.	" 4 ⅜ staples, at 10 cts.....	40		
	31.	" repairing reaming irons 7 hours' time, at 90 cts.....	6 30		
165	Nov.	2 " 3 days' work, at $4 per day.....	$12 00		
		2. " 3 6½ harts, at 80 cts.....	2 40		
	2.	" 17 days' wharfage, at $2.....	34 00		
	2.	" 2 papers of escutcheon pins, at 75 cts..	1 50		
	2.	" 11 feet oak saddle, at 6½ cts.....	72		
		Amounts carried forward.....	$58 06	$6,462 44	
1874.		Amounts brought forward.....	$58 06	$6,462 44	
Nov.	2.	To 21 feet of white-pine mast wedges, at 6c.....	1 26		59 32
	2.	" hardware joiner.....	27 43		
	2.	" 108 feet of spruce joiner, at 4 cts.....	4 32		
	2.	" 6 feet of walnut joiner, at 14 cts.....	84		
	2.	" 152 feet of white-pine lumber joiner, at 7 cts.....	10 64		
	2.	" 118 feet of white-pine lumber joiner, at 6½ cts.....	7 67		

2.	" 654 feet of white-pine lumber joiner, at 6 cts	39 24		
2.	" 99 feet of ash joiner, at 9 cts	6 93		
2.	" planing ash	55		
2.	" 127 days' work, joiner, at $3.50	444 50		
			542	12
2.	" 1¾ hour's time and yoke, at 90 cts	1 58		
2.	" 3 split keys, at 10 cts	30		
			1	88
			$87,065	76

CR.

1874.				
Nov. 2.	By 490 pounds of old yellow-metal, at 15c.	73 50		
2.	" one old mast	15 00		
			88	50
	Amount carried forward		$86,977	26
1874	Amount brought forward		$86,977	26
Nov. 21.	Dr. to error in charge for 138 feet of oak, October 22, 1874		6	50
			$86,983	76
21.	Cr. by error in calculation for railway hire		2	75
			$86,981	01

EXHIBIT B.—March 18, 1876.

[Branch office of the Boston Marine Insurance Company, Geo. H. Stetson, manager, 67 Wall street.]

NEW JERSEY, *Dec. 23d*, 1874.

For value received, we hereby assign and transfer to Geo. H. Stetson, manager of Boston Marine Insurance Company, all claims which we have against the steamer New Orleans and owners, for damage sustained by us on account of the schooner Allie Bickmore and cargo having been run down by the said steamer New Orleans, and we hereby agree and guarantee that we will make no claim for any loss, damage, or average against the said steamer New Orleans or owners provided a settlement is made by them with the said George H. Stetson, manager; and that any settlement which the said George H Stetson, manager, shall make with the said steamer and owners, for the said damages, shall be binding upon us.

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(Signed) ST. MARY'S RIVER LUMBER CO.,
By JNO. J. ROSS, JR.,
Gen'l Manager.

EXHIBIT A.—March 18, 1876.—E. L. O.

NEW YORK, *Nov. 11th*, 1874.

St'r New Orleans and owners to Boston Marine Ins. Co., Dr.

[Geo. H. Stetson, manager, 67 Wall street.]

For loss sustained by said company as underwriters upon cargo of schooner Allie Bickmore, which was run down and sunk by said steamer, viz:

Telegrams to and from Philadelphia	$1 37
Surveys, and piling lumber	50 00
Estimated expenses, in general average, to get cargo forward and save loss to all concerned	294 77
Damage on lumber	500 00
Lumber totally lost by the disaster	147 36
Services of Geo. H. Stetson, attending to matters	50 00
Commission upon disbursements, say 2½ per cent	25 46
Interest upon disbursements, at seven per cent. per annum to date	4 24
	$1,073 20

167 EXHIBIT A.—E. L. O., November 29, 1876.

NEW YORK, *Dec. 14th*, 1874.

Mr. Wm. Hazzard bought of Peter Sanford & Co., the St. Mary's River Lumber Co., manufacturers and dealers in yellow-pine timber and lumber, Watson's stores.

So. Brooklyn saw-mill, 19,210 ft. 4x6, less deduction for 3,793 ft. returned by Mr. Hazzard previously	15,417 ft.		
So. Brooklyn saw-mill	also 300 ft. plank.		
	15,717 ft., at $26.50	416 50	
	½ inspection	3 93	$420 43
Pd. $100 difference on price Watson's stores flooring			100 00
Kept by P. S. & Co.			520 43
Charge to W. stores			300 00

CONTRA, CR.

Nov. 20. By cash	bal.	300 00	22 000
" 2. " $3 per M. due on 6,950 ft. B. M. 4-in. planks sold to Jno. T. Martin		20 88	
" 2. " $1 per M. due on 4,483 ft. sold to Jno. T. Martin		4 48	
			325 36
Bal. now due			$95 07

E. O. E. 22d Dec., 1874. Rec'd payment, and in full of all demands to date.

ST. MARY'S RIVER LUMBER CO.
Per JNO. J. ROSS, JR.
P. SANFORD & CO., ROSS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, Edward L. Owen, the commissioner to whom was referred this case to ascertain the damages sustained by the libellants, do hereby certify that the foregoing contains all the proceedings on such reference other than the report.

EDWARD L. OWEN,
U. S. Commissioner.

Dated New York, March 24th, 1877.

168 *For identification, Exhibit A.—E. L. O., June* 21, 1876.

ABIEL GOVE sworn:

I reside in Boston, Mass.; my age is fifty-six years; my business is a ship-builder; I have been engaged in that business thirty years; I know the schooner Allie Bickmore; I am one of the owners; I own one-fourth of the schooner; she was built in Boston, Mass.; she was built in the year 1873; she was built by myself; her registered tonnage is about 390 tons.

Q. What was the cost of construction of the Allie Bickmore?

(Objected to as irrelevant.)

Ans. Her hull cost, without spars, twenty-five thousand (25,000) dollars.

Q. Will you state, from your experience as a shipwright, what is the cost of construction of a new vessel per ton?

(Objected to by Mr. Roney.)

Ans. They cost, without spars, about fifty dollars per ton.

Q. Have you made an estimate of the cost of repairs of this vessel as charged in this bill per ton?

Ans. (Witness makes a figure, and then says it will cost nearly five hundred dollars per ton.) I mean the repairs as charged in the bill.

Q. How many bolts were used in the construction of this vessel? I mean in that part of the vessel repaired by Birely, Hillman & Streaker.

(Objected to by Mr. Roney.)

Ans. There were about 1,473 pounds.

Q. Mr. Birely has stated in his testimony that the bolts used in the repair were taken out, repaired, and put back again; how many bolts has he charged for in his bill for repairs?

(Objected to by Mr. Roney, as the bill speaks for itself.)

Ans. 1,233 pounds.

Q. Will you state the fair estimate of labor in straightening those bolts?

Ans. Two and one-half days ought to have done the whole of it; they have got nearly as many bolts charged as was originally in that part of the vessel, besides all they took out and put back, which ought to have amounted to at least one-half. It takes about fifty pounds of spikes to a thousand feet of deck plank; according to what they have used, it would take one hundred and twenty pounds. I find they have charged 341 pounds for the deck; then in addition to that (Mr. Gove is reading from the paper produced by Mr. Lynn yesterday, to which Mr. Roney

objects. Mr. Gove then takes the original bill of Birely, Hillman & Streaker), I find by looking at the bill of Birely, Hillman & Streaker another charge of 137 pounds of galvanized spikes; while only twenty-nine pounds were used, and one-half they used in the vessel came out of the vessel.

Q. Will you state what is a fair estimate of the amount of bolts and spikes required in the repair of this vessel?

169 Ans. I would say that one hundred pounds of galvanized spikes in addition to what they got out ought to have repaired her, and two hundred pounds of black spikes ought to have repaired her in addition to what they got out. Six hundred pounds of bolts in addition to what they got out ought to have repaired her. I find they have charged 1,233 pounds of bolts. We object to everything in the blacksmith's bill; everything is large.

Q. State the particulars, so far as you can.

Ans. I find the labor for repairing iron in all cases is more than double that what it should be. I find the drift-bolts, punches, and augers, and no credit given for what was returned. I find they have charged for reaming iron, and have likewise charged for repairing the same iron six 30-100 dollars, after they have got through with them; they must have made them better than they were when they commenced to use them; they cost two 10-100 dollars when new, and they have given no credit for the same.

Q. What is the wastage in oak timber used about the bow?

Ans. Twenty-five per cent. will cover all the waste in the bow of this vessel; the wastage in pine is about ten per cent.

Q. Will you state whether this paper which you hold in your hand, marked Respondent B, contains the oak timber as charged for in the bill, and also the oak timber as measured in the vessel?

(Objected to by Mr. Roney, as no evidence has been produced to show witness ever measured a stick of it.)

Ans. It does.

Q. Will you state whether this paper which you hold in your hand, marked Respondent C, contains the pine timber as charged for in the bill, and also the pine timber as measured in the vessel?

(Objected to by Mr. Roney as before.)

Ans. It does. I was present at the survey made by Messrs. Wade, Goodwin, and Lynn, and also Mr. Pugh. I have examined the survey; it is correct; there is, including the joiner's work, 1,021½ days of labor charged in the bill.

Q. Can you state the amount of labor in days employed in the original construction of the vessel?

Ans. It took about 2,000 days carpenter work; 175 days to caulk the vessel; it took 175 days to do the outside joiner's work.

Q. What is the estimate for labor per ton in the construction of a vessel?

(Objected to Mr. Roosney.)

Ans. It costs about twelve dollars per ton to do the carpenter's work and fastening; it cost from one 30-100 to one 50-100 dollars to do the caulking; it cost about one 25-100 dollars to do the outside joiner work.

Q. What rate per ton for labor is charged in this bill?

Ans. I have not made any calculation. I see before me the

170 charge for repair; the number of days employed in repairing is nearly one-half employed in the original construction of this vessel.

Q. Can you state what proportion of the vessel in tonnage was repaired?

Ans. They repaired a little short of one-eighth of the vessel, about one-tenth of the vessel.

Q. Will you state how the timber used in the repair of this vessel was measured?

Ans. We took the length of the deck plank and allowed them to be six inches wide; the lengths were all added together, that was halved and called the face, and multiplied by three and a half for the thickness; beams were taken for the whole lengths and allowed for the bigness in the centre; the ledges and carlines were taken in the same manner; the ceiling was taken the whole length and measured on its widest end; the length was taken on the outside linings, and nothing deducted for laps, which should have been; the outboard plank was taken in the same manner, measured on its widest end; the bulwarks were measured the whole length, width in the widest place; the water-ways and spirketing were taken in the same manner; the forecastle deck beams were all measured in the largest places; the white pine for joiners was measured in the same way; the oak stock was all measured in the same way. The knees were all counted; there were two four-inch knees we could not find; the other knees were correct, except the sizes of the windlass bitt-knees, which we found to be only 6½, and we allowed them to be eight before they were worked, and are now very wany; they do not work up square; they are not big enough; we found the pall-bitts were not large enough to work square; the two-inch wain on the head ought to have been two inches larger to work square; they were worked two inches larger than they would square.

Plan marked Respondent D offered in evidence. The witness now states the rail was made in four pieces and two lengths. I mean the new rail made. Scarfs were made with two anchor-stoke pieces, and the rail as worked is 16 inches wide. I find that a straight piece 18 inches wide would make the after-piece, and 20 inches would make the forward piece, including all waste; on this plan shows the direction in which the cants run or stand in the bow of the vessel, the plan showing that 2½ inches at the head will bevel the first cant, and it bevels about ½ inch in 10 at the foot. Two inches will bevel the second cant, 1¾ inch will bevel the third cant, 1½ inch will bevel the fourth cant, all hewing square at the heel; the two forward ones hew square.

On the opposite side of Plan D is an exact plan showing the timbers put in by Birely, Hillman & Streaker, with their lengths. This vessel was sailed on shares.

The witness states that he would like to state in correction: I have made quite a mistake in my figures with regard to the price per ton for repairs as charged in the bill. I said it would cost five hundred dollars per ton. At registered tonnage it would cost about two hundred and twenty-five dollars per ton.

171 *For identification, Exhibit A.—E. L. O., June 21st, 1876.*

Hard pine, Respondent C.

		H. G. C.		
2,432	feet deck plank, 6c.,	3,568	feet	$214 08
737	" " frame, 6c.,	1,677	"	100 62
2,888	" bilge streaks, 6c.,	3,300	"	198 00
433	" ceiling, 6c.,	710	"	42 60

224	"	clamps, 6c.,		1,145	"	.....	68	70
316	"	forecastle deck beams, 6c.,		220	"	.....	13	20
120	"	inside bulwarks, 6c.,		201	"	.....	12	06
148	"	clamps under rail, 6c.,						
37	"	plankshire moulding, 6c.,		80	"	.....	20	76
120	"	water-ways, 6c.,		346	"	.....	20	76
99	"	spirketing, 6c.,		147	"	.....	8	82
26	"	forecastle deck stanchions, 6c.,						
330	"	outboard bulwarks, 6c.,	17	253 364	" "	$847 02	15 21	18 84
2,570	"	outboard plank, 6c.,		3,599	"	.....	215	94
208	"	windlass bed, 6c.,		260	"	.....	15	60
87	"	bowsprit bed, 6c., 5½		247	"	.....	13	59
82	"	end of forecastle deck, 6c.,		170	"	.....	10	20
198	"	traveller,		225	"	.....	13	50
120	"	white pine, 2 in.						
96	"	" " "						
50	"	" " 1 in.						
50	"	" " 1 in.						
80	"	" " 1 in.						
20	"	" " 1¼ in.						
126	"	spruce.						

Oak, Respondent B.

				H. G. C.				
684	feet	oak pointers and braces, 6½c.		1,277	feet	.....	$883	01
221	"	" for shute, 6½c.,		221	"	.....	14	36
126	"	" for port-sills, 6½c.,		126	"	.....	8	19
176	"	" for pall-bitts, 6½c.,		294	"	.....	19	11
105	"	" for windlass-bitts, 6½c.,		219	"	.....	14	24
19	"	" " following-piece, 6½c.,		28	"	.....	1	82
99	"	" " cathead, 6½c.,		195	"	.....	12	67
96	"	" " bow-chock, 6½c.,		515	"	.....	33	48
75	"	" " " " 6½c.,		312	"	.....	20	28
230	"	" " " rail, 6½c.,		639	"	.....	41	54
50	"	" " " " 6½c.,						
1,123	"	" " frame timbers, 6½c.,		2,509	"	.....	150	50
37	"	" " scuttle, 6½c.,		68	"	.....	4	42
131	"	" " anchor-stock, 6½c.,		196	"	.....	12	74
26	"	" " chock aft, 6½c.,		58	"	.....	3	77
2—8	inch	knees for bitts, $88 12 00		1-9-1-10		.....	15	00
4—5	"	" " house (hack)				.....	14	00
4—4	"	" " " (hack)				.....	10	00
3—8	"	" (hack)		4-8 in		.....	32	00
7—7	"	"		7-7 in		.....	49	00
1—6	"	knee		1-6 in		.....	4	50
1—8	"	"		1-8 in		.....	8	00
3—4	"	knees under forecastle deck				.....	7	00

172 *For identification June 21st, 1876.—E. L. O., U. S. Com'r.*

MONDAY, *October* 25, 1875.

Present, J. B. Roney, esq., for libellants; Henry Flanders, esq., for respondents.

ABIEL GOVE recalled:

Q. Please state whether there is a suit pending in New York on be-

half of the owners of the schooner Allie Bickmore against the steamship New Orleans for the collision resulting in these repairs.

Ans. I believe there is. Yes, sir; there is; carried on through the captain.

Q. Have you, as the representative of the owners, given any orders with respect to the bill of Birely, Hillman & Streaker, so far as it is connected with the litigation in New York?

Ans. I called on our lawyer on my way to Philadelphia here, and he informed me that Birely & Co. had been over there to testify in regard to this bill; I ordered him to stop proceedings with regard to this bill until we got the suit settled in Philadelphia, and to notify the steamship owners to that effect, but that he could proceed with the other bills that were not in litigation.

Q. You have stated in your former examination that you are a shipwright, and that you built the schooner Allie Bickmore. Will you now state, from your experience as a shipwright, what proportion the labor bears to the material in making repairs?

(Objected to, as witness is a party to this suit, and cannot be called as an expert.)

Ans. My experience since I have been in business, which has been rising twenty years, on my own account, in estimating on general repairs, we have always made the stock the basis on which to calculate the labor, and we have always found that a job amounting to $2,000, and from that up to $5,000, the stock will about equal the labor. When you get above that the stock will outrun the labor considerably.

Q. Did you see this vessel after the collision and before the repairs?

Ans. I saw her after the collision, but not before the repairs were made.

Q. Where did you see her?

Ans. I saw her in Jersey City the first time; that was when the survey was made upon her.

Q. Could you, from what you saw of the schooner at that time, and the examination which you made, ascertain the extent of the damage done her and the cost of repairing her?

Ans. I could.

Q. Will you state at what cost of labor and material you could have repaired the damage which that schooner had sustained?

(Objected to.)

Ans. I went over the survey made by parties, and from that I
173 have made an estimate. This is the estimate that I have made.
(Paper produced and offered in evidence, and marked H. P. B., No. 8.) Amounting to $3,613.13.

Q. Will you state whether you have examined the bill of Birely, Hillman & Streaker, and; if so, will you state whether you have discovered therein overcharges with regard to material, and, if so, will you point out the items?

(Objected to as before.)

Ans. I have gone through the bill very carefully, and I have gone through the books of the two foremen very carefully. I find on Mr. Bowen's book 1,073 feet as deck-frame (deck beams and frame). I find by comparing his length by the lengths of the survey that his 7-foot piece, 14 by 14, would just make his filling-in pieces which he calls forward beams, and has designated it so in his book. This plan shows the manner in which it should be cut or he probably cut it. (Plan marked "H. P. B., No. 5.") On the same plan and by his book he had

another piece 46 feet long, 14 by 14, from which he cut one beam 20 feet long, and another one 14 feet long, which would leave a piece 12 feet long, 14 by 14, which he would have no use for, and should have been credited to the vessel, which would measure 196 feet; that deducted from what he has charged us would leave 880 feet. Then I find, by comparing that with the survey, and adding 10 per cent., for wastage, to the survey, would make it 811 feet, which shows that our survey corresponds very nearly with what they actually used, and their overcharge in the deck-frame is 100 per cent. I find by Mr. Bowen's book, he measured a piece of timber for windlass-bitts that was 7 feet long, 16 by 17, which was a good deal too large to make the bitts of; that he could have sawed a plank 4 inches thick and 17 inches wide, 7 feet long, from it, measuring 40 feet; that deducted from the original contents, which was 159 feet, would leave 119 feet only that he delivered us. I find by examining Mr. Howell's book a piece charged for pall-bitt, 14 long, 14 by 18 inches, which was a good deal too large for bitts for such a vessel; that he could have sawed a 3-inch plank off one side of it, which would have been 14 feet long, 18 inches wide, and would measure 63 feet; and he could saw another plank from the same piece 14 feet long, 11 inches wide, and 2 inches thick, making 26 feet. Both added together would make 89 feet; that deducted from 294, the original contents, would only leave 205 feet delivered. That was an overcharge of some 30 per cent.

Q. Does this paper show the measurements as made by Birely, Hillman & Streaker?

Ans. It does, and also what could be saved from each piece. (Paper produced and offered in evidence, and marked "H. P. B., No. 9.") I find on Mr. Bowen's book three oak plank charged for bow rail; one 26 feet long, 19 inches wide, 5 inches thick, containing 205 feet; another 26 feet long, 19 inches wide, 5 inches thick, containing 205 feet; one 26 feet, 21 inches wide, 5 inches thick, containing 227 feet. I
174 will show by a diagram here that they would not need but 20 of one plank in length, and 14 feet in length of another would make the bow rail, which was only 34 feet long, and they would have 12 feet left from the 14 feet cut to make their scarf with; they would have the one 26 feet long, 21 inches wide, and 5 inches thick left, that there would be no necessity of cutting, making 227 feet left from that plank, and another piece 6 feet long, 19 inches wide, 5 inches thick, measuring 47 feet. The two added together will make 274 feet, worth at their prices $17.81, that being an overcharge of 75½ per cent.

Q. Does this paper show your calculations and estimates and plan of the manner in which the rail was made?

Ans. Yes, sir.

(Plan offered in evidence, and marked "H. P. B., No. 10.")

I find by Mr. Bowen's book twenty-two timbers charged for timbering the bow, of the following dimensions:

One	12	feet,	14	by 10	One	12	feet,	12	by 9
"	14	"	16	" 10	"	13	"	13	" 9
"	13	"	14	" 10	"	11	"	12	" 9
"	12	"	12	" 10	"	5	"	12	" 9
"	14	"	15	" 10	"	4	"	10	" 9
"	11	"	14	" 10	"	10	"	11	" 9
"	13	"	12	" 9	"	9	"	10	" 9
"	12	"	13	" 9	"	8	"	11	" 9
"	10	"	13	" 12	"	12	"	11	" 9
"	17	"	11	" 10	"	16	"	15	" 8
"	8	"	13	" 9	"	12	"	12	" 8

Making 248 feet in length. I show on this plan how he could have used them, and sawed six long timbers. I take the first one named, 12 feet, 14 by 10, and make No. 1 on this plan. I take 14, 16 by 10, and make part of No. 3. I should have stated that these cant timbers were only 20 feet long from the keel to the rail. I make No. 5 from 12, 12 by 10. I make No. 6 from 13, 14 by 10. I make Nos. 7 and 4 by cutting 13, 12 by 9, in two, making 7 and 4. I make No. 9 of 14, 15 by 10. I make No. 8 and No. 2 by cutting 11, 12 by 9, in the middle. That makes those two correspond with those numbers. I make No. 10 from 13, 13 by 9. I make No. 11 out of 10, 13 by 12. I make No. 12 out of 17, 11 by 10, by cutting it in two, and the balance I make a short timber numbered 4. I make 13 out of 10, 11 by 9. I make 14 out of 8, 11 by 9. I make 15 out of 4, 10 by 9. I make 16 out of 8, 13 by 9. I made 17, 18, and 19 out of 16, 15 by 8, by cutting it into three pieces. That fills all the timbers. Then I would have 17 timbers left, one 5 feet long, marked with —— in front; one 11 feet long, marked the same; one 12 feet long; one 12 feet long; one 9 feet long; one 12 feet long; another 12 feet long, making 75 feet in length, measuring 657 feet that would have no use for. The top ends of these top timbers all moulded 6 inches, and hewed nearly square; their average width charged is 13 inches. Eight
175 of these top timbers could have been split in the middle and made two each, thereby saving 250 feet more, making 862 feet saved, worth 6½ cents per foot, would be worth $56.03. If this stock had been prudently selected 100 per cent. could have been saved, as shown by Pusey, Jones & Co.'s estimate, their estimate being 1,200 feet, and they charge 2,509 feet.

(Paper offered in evidence, and marked "H. P. B., No. 11.")

I find by Mr. Bowen's book he has charged as ceiling plank and clamps 22 planks of the following dimensions:

46	feet,	16	by	3½		55	feet,	17	by	4½
44	"	14	"	3		26	"	14	"	4½
39	"	14	"	3½		30	"	14	"	3½
43	"	15	"	3		40	"	14	"	3
31	"	14	"	3½		38	"	14	"	3½
35	"	14	"	3½		36	"	14	"	3
50	"	16	"	3½		38	"	14	"	3½
37	"	12	"	3		36	"	14	"	3½
30	"	14	"	3½		38	"	14	"	4
36	"	14	"	3½		41	"	15	"	4½
54	"	16	"	4		45	"	14	"	4
39	" 6 in.,	12	"	3		32	"	15	"	3½
36	"	14	"	3½		36	"	14	"	4
41	"	14	"	3½		35	"	14	"	3½
40	"	14	"	4		35	"	14	"	3½
55	"	17	"	4½		36	"	14	"	3½

Making 1,253 feet in length. I find by the survey marked clamps and ceiling one—

34	feet,	16	by	3½		24	feet,	11	by	3½
30	"	16	"	3½		20	"	11	"	3½
25	"	12	"	3½		27	"	11	"	3½
21	"	12	"	3½		23	"	11	"	3½
29	"	10	"	3½		37	"	12	"	4½
25	"	10	"	3½		33	"	12	"	4½
32	"	11	"	3½		53	"	12	"	4½
28	"	11	"	3½		49	"	12	"	4½

20	"	10	"	3½	32	"	12	"	4½
17	"	10	"	3½	28	"	12	"	4½
27	"	10	"	3½	37	"	12	"	4½
20	"	10	"	3½	23	"	12	"	4½
14	"	9	"	3½	32	"	12	"	3½
10	"	9	"	3½	32	"	12	"	3½

Making 776 feet in length. Deduct that from 1,253, you have 477 feet left, equal to about 61 per cent. which there was no use for. Then I have matched these planks up to show how this ceiling could be put in and save nine whole plank, measuring 352 feet in length, and eight parts of plank from 8 to 23 feet long, making 82 feet in length, added together make 434 feet, being 3½ thick, is 1,725 feet. Then there should be deducted from that 1,725 for thin ceiling, 433 feet, leaving
176 1,292 feet that they would have no use for, and they are placed in the following manner: I take plank 35 in Bowen's book, and I make plank No. 1 on survey. I take plank 31, and make No. 2. I take plank measuring 46; I cut it in two in the middle, and make 25 and 21 as per survey marked 19. I take plank 30, marked No. 3, and make plank 29 of it. I take plank 30, marked No. 4, and make 25 of it. I take plank 36, marked No. 5, and make 32 of it. I take plank 36, marked No. 6, and make 28 of it. I take plank 32, marked No. 7, and make 27 of it. I take plank 35, marked No. 8, and make 23 of it. I take plank 45, marked No. 9, and make 37 of it. I take plank 41, marked No. 10, and make 32 of it. I take plank 55, marked No. 11, and make 53 of it. I take plank 54, marked 12, and make 49 of it. I take plank 55, marked 13, and make 32 of it. I take plank 36, marked No. 14, and make 28 of it. I take plank 38, marked 15, and make 27 of it. I take plank 26, marked 16, and make 23 of it. I take plank 35, marked 17, and make 32 of it. I take plank 36, marked 18, and make 32 of it. I take plank 44, marked 23, and cut it in two, and make 24 and 20. I take plank 50, marked 21, cut it in two, and make 27 and 23. I take plank 39, marked 20, cut it in two, make 21 and 17 of it. I take plank 36, marked 22, and cut it in two, and make 14 and 10 of it. That fills all of the ceiling, and have the number left that I have stated above—9 whole plank and seven pieces running from 8 to 23 feet.

Q. And what would have been the saving in dollars and cents?

Ans. $77.52.

(Paper offered in evidence, and marked "H. P. B., No. 12.")

MONDAY, *October* 25, 1875.

Present, Mr. Roney, for libellants; Mr. Flanders, for respondents.

ABIEL GOVE, continued:

Q. Do I understand you to say if proper timbers had been selected and they had been properly cut up the saving you have stated in your testimony, and shown by the Exhibits 8, 9, 10, 11, and 12, H. P. B., could have been made?

(Objected to as before, because this witness cannot be called as an expert.)

Ans. They could; if they had used the timbers specified in their book they would have stuck up above the main rail 8 feet; the cants were only 20 feet long; I mean the cant frames; and if they had used the lengths of planks specified they would have had 477 feet, which it would have been impossible to have got in. Their lengths for main rails they would have had 32 feet, which it would have been impossible to have got in.

Q. Have you compared Birely, Hillman & Streaker's bill with
177 the survey, and have you made a statement exhibiting the results of such examination as respects the material?

(Objected to as before.)

Ans. I have.

Q. Will you look at this paper (paper exhibited marked "H. P. B. No. 13"), and state whether that is the paper containing your statement?

(Objected to as before.)

Ans. It is.

Q. Look at that paper and say what is the difference in the pine stock?

(Objected to as before.)

Ans. I have made the calculation on the whole stock, oak, pine, and all the stock. There is an overcharge on an average of fifty-six per cent.

Q. State whether there is any, and if any, what, percentage of overcharge in the labor.

(Objected to as before.)

Ans. According to my experience in the business, the labor is overcharged more than the stock.

Q. Can you state the percentage or about?

(Objected to as before.)

Ans. In my calculations I have treated the labor the same as the stock; if you take the labor alone calculated by the stock, it will overrun more than sixty per cent.—it exceeds it by a trifle.

Adjourned by consent, the witness to return for cross-examination.

178 United States district court, southern district of New York.

JOHN S. WEEKS ET. AL., }
vs. }
STEAMSHIP NEW ORLEANS. }

Exceptions of libellants to commissioner's report herein.

I. The libellants except to the refusal of the commissioner to allow interest on the amount of $2,329.66, ascertained to be the damages for the detention of the vessel, and called demurrage, from the date of the commencement of this action.

II. The libellants except to the refusal of the said commissioner to allow the sum of $56, paid for surveys on said vessel under the order of the United States district court for the eastern district of Pennsylvania.

III. The libellants except to the refusal of the commissioner to allow $22, the expense paid for protest, and extending protest, after said collision.

IV. The libellants except to the refusal of said commissioner to allow $192, the expense of employing Mr. Cornish, a shipwright, to superintend the repairs of said vessel.

V. The libellants except to the refusal of said commissioner to allow anything for permanent damage or depreciation in the value of said vessel in the market by reason of said collision.

VI. The libellants except to the refusal of said commissioner to allow anything for damage by dirt and handling of the cargo of said vessel, amounting to $861.24, over and above the sum of $169.90, as for shortage.

179 VII. The libellants except to the refusal of said commissioner to allow interest on the sum of $1,000, allowed for unrepaired damage on starboard side of said vessel, from the commencement of this action.

VIII. The libellants except to the refusal of said commissioner to allow the expense of the general average adjustment—$150.

IX. The libellants except to the refusal of the commissioner to allow expense of sending inspectors of cargo to Philadelphia.

SCUDDER & CARTER,
Proctors for Libellants.

(Endorsed:) U. S. district court. John S. Weeks et al., vs. Steamship New Orleans. Libellant's exceptions to commissioner's report. Scudder & Carter, proctors for libellants. Filed March 27, 1877. Exceptions disallowed. S. B. May 25, 1877.

U. S. district court, southern district of New York.

JOHN S. WEEKS ET AL.
vs.
THE STEAMSHIP NEW ORLEANS, &C.

Further exception by libellants to the commissioner's report herein.

X. The libellants except to the allowance by the commissioner of the sum of $600 as an abatement of the bill of repairs herein, on account of the said repairs enhancing the value of the vessel.

SCUDDER & CARTER,
Proctors for Libellants.

(Endorsed:) U. S. district court. John S. Weeks et al. vs.
180 The Steamship New Orleans, &c. Additional exception of libellants to report of commissioner. Scudder & Carter, proctors for libellants. Filed March 29th, 1877. Exception allowed May 25, 1877. S. B.

United States district court.

JOHN S. WEEKS ET AL.
versus
THE STEAMSHIP NEW ORLEANS, &C.

The claimants except to the report of Edward L. Owen, esq., commissioner, bearing date March 24, 1877, as follows:

1. To all sums allowed for towage, health dues, board of crew, wharfage, shoving schooner into shallow water, cleaning up the wreck, saving and getting vessel afloat, use of sheers—upon the grounds, among others, that the service allowed for was unnecessary, except in cases where it must have been incurred at all events; that it was not due to the collision; that the sum allowed is extravagant; and that if the libellants had acted with proper regard to the interests of the claimants, and as their duty to them required, and as they were requested by the claimants to do, such expense would have been saved.

2. To all sums allowed for discharging lumber, cartage, ship-chandlery and repairs to furniture, stove and other movable articles, upon the grounds, among others, that the item allowed for was not caused by the collision; that the allowance made is extravagant; and that if the libellants had acted as their duty required, and as they were requested to do by the claimants, the item as a separate charge need not have been incurred.

3. For all sums allowed for new jib, rigging, resalting, stowing and carting furniture, painting, new mast, expenses of captain and mates, upon the grounds, among others, heretofore stated.

4. To the sum allowed for the bill of Birely, Hillman & Streaker, upon the grounds, among others, that the amount allowed was not for damages caused by the collision; that the claimants took advantage of the circumstances to have extravagant and needless repairs made to their vessel; that all repairs made necessary by the collision, including many of the expenses previously excepted to, might have been made at an expense of less than $4,500; and that this was well known to the libellants, who, in violation of their duty to the claimants, and notwithstanding the request of the claimants, saw fit to incur needless repairs at an extravagant rate.

5. To the $1,000 allowed for damage to the starboad side of the schooner, upon the ground that that side of the schooner was not injured, and that the pretense of damage thereto was without foundation.

6. To the sum allowed for demurrage, upon the ground, among others, that the repairs to the schooner were needlessly delayed; that the rate allowed is too high; and that no such item as was allowed for was caused by any necessary repairs to the schooner.

7. To the allowance for freight, upon the ground, among others, that no such loss of freight was caused by the collision.

8. To the allowance for stowing lumber in Philadelphia, and for transporting the cargo from Philadelphia to New York, upon the ground that there was no occasion to incur such expense.

New York, March 31, 1877.

MAN & PARSONS,
Proctors Claimants.

(Endorsed:) U. S. district court. John S. Weeks et al., vs. The Steamship New Orleans, &c. Exceptions of claimants to commissioner's report. Man & Parsons, proctors for claimants, 56 Wall street, New York. Exceptions 1, 2, 3, 4, 6, 7, 8, disallowed. The item of $1,000 referred to in exception 5, must be disallowed; and exception 5 is sustained to that extent. May 25, 1877. S. B. Filed April 2d, 1877.

At a stated term of the district court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 11th day of June, in the year one thousand eight hundred and seventy-seven:

Present, Hon. Samuel Blatchford, district judge.

JOHN S. WEEKS, JAMES V. FITCH, JOHN RENNISTON, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, L. H. Jackson, W. A. Elwell, Lewis Ogier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants,
against
THE STEAMER NEW ORLEANS, HER ENGINES, tackle, apparel, and furniture, and John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird and Alfred Moulton, claimants.

An introductory decree having been made and entered in this

183 action on the 31st day of May, 1875, condemning the steamer New Orleans for the damages sustained by the libellants, by reason of the collision mentioned in the libel herein, and referring the matter to a commissioner of this court to ascertain and compute the amount of such damages, and to report thereon to this court with all convenient speed;

And the report of the commissioner having been filed on the 27th day of May, 1877, by which there is reported due the said libellants for the damages by them sustained, by reason of the collision complained of in their libel herein, the sum of fifteen thousand nine hundred and ninety-seven dollars and ninety-seven cents ($15,997.97);

And exceptions thereto having been filed within the time prescribed by the rules and practice of this court, by both the libellants and the claimants, and the said exceptions having been argued by Mr. George A. Black, of counsel for the libellants, and by Mr. John E. Parsons, of counsel for the claimants:

It is ordered, adjudged, and decreed, that the first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth exceptions of the libellants be and the same are overruled, and that the tenth exception of the libellants be allowed; and the sum of $600 and interest thereon from November 10th, 1874, be allowed as damages to libellants in addition to the amount reported by said commissioner.

And it is further ordered, that the first, second, third, fourth, sixth, seventh, and eighth exceptions of the claimants be disallowed, and that so much of the claimants' exceptions be allowed as excepts to the allowance of $1,000 therein specified, and that that sum be deducted from the damages reported by the said commissioner.

And that the said report as modified be confirmed and the amount of damages sustained by said libellants is hereby ascertained to be the sum of fifteen thousand six hundred and eighty-two dollars and thirty-seven cents ($15,682.37), and interest thereon from March 24th, 1877, the date of said commissioner's report, to date of this decree, amounting to fifteen thousand nine hundred and four 98-100 dollars.

184 And it is further ordered, adjudged, and decreed, that the libellants recover against the said Steamer New Orleans, her engines, tackle, apparel, and furniture, the said sum last-above mentioned, together with their costs taxed at the sum of six hundred and ninety dollars and sixty-seven cents, amounting in all for damages, interest, and costs to the sum of sixteen thousand five hundred and ninety-five dollars and sixty-five cents, and that said steamer New Orleans, her engines, tackle, apparel, and furniture, be condemned therefore.

And it is further ordered, that unless an appeal be taken from this decree within the time limited by law and prescribed by the rules and practice of this court, that the libellants have execution to enforce satisfaction of this decree.

U. S. district court, southern district of New York.

THE STEAMER NEW ORLEANS, HER ENGINES, tackle, apparel, and furniture, and John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants,

against

JOHN S. WEEKS AND OTHERS, LIBELLANTS.

You will please take notice, that the above-named claimants hereby

appeal to the United States circuit court for the southern district of New York, in the second circuit, from the decree of this court
185 entered in this cause on June 11, 1877, and from every part thereof.

Dated June 18th, 1877.

Yours, &c.,

MAN & PARSONS,
Proctors for Claimants of Steamer New Orleans.

To GEORGE F. BETTS, Esq., *Clerk.*
SCUDDER & CARTER, Esq.,
Proctors and Libellants.

(Endorsed:) U. S. district court. The Steamer New Orleans, her tackle, &c., and others, claimants, against John S. Weeks and others. Notice of appeal. Man & Parsons, proctors appellants, 56 Wall street, New York. Filed June 18, 1877.

District court of the United States, southern district of New York.

JOHN S. WEEKS ET AL., LIBELLANTS,
ag'st
THE STEAMER NEW ORLEANS, HER TACKLE, apparel, and furniture.

Take notice that the libellants herein intend to appeal to the next circuit court of the United States for the southern district of New York from so much of the decree dated June 4, 1877, and entered at the district court herein on the 11th day of June, 1877, as overrules the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, and 9th exceptions of the libellants to the report of the commissioner herein, and also from so much thereof as orders "that so much of the claimants' exceptions be allowed
186 as excepts to the allowance of $1,000 therein specified, and that that sum be deducted from the damages reported by the said commissioner."

Dated, June 14, 1877.

Yours, &c.,

SCUDDER & CARTER,
Proctors for Libellants.

To GEO. F. BETTS, Esq., *Clerk.*

(Endorsed:) U. S. district court, S. D. N. Y. John S. Weeks et al. vs. The Steamer New Orleans, her tackle, &c. Notice of intention to appeal. Scudder & Carter, libellants' proctors. To Geo. F. Betts, Esq., clerk. Filed June 14, 1877.

Know all these men by these presents that we, John H. Clark, of Yonkers, New York, Samuel H. Seaman, of No. 114 Fort Green Place, in the city of Brooklyn, and Cornelius H. Delamater, of No. 424 West Twentieth street, in the city of New York, are held and firmly bound unto John S. Weeks, James N. Fitch, John Penniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants, in the sum of eighteen thousand dollars ($18,000), to be paid to the said John S. Weeks and others, as

aforesaid, their executors, administrators or assigns; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants of the steamer
187 New Orleans, as appellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the eleventh day of June, 1877, in a suit in which John S. Weeks and others are libellants, against The Steamer New Orleans, her engines, tackle, &c., and said claimants: Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

JNO. H. CLARK. [L. S.]
SAM'L. H. SEAMAM, "
CORNELIUS H. DELAMATER. "

Sealed and delivered, and taken and acknowledged, this 20th day of June, 1877, before me, as to Clark and Seaman; and this 21st day of June, 1877, as to Delamater.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John H. Clark and Samuel H. Seaman, the said John H. Clark and the said Cornelius H. Delamater being duly sworn, each depose and say that he resides in the southern district of New York, and the said Samuel H. Seaman, that he resides in the eastern district of New York, that he is worth the sum of thirty-six thousand dollars over and above all his just debts and liabilities.

JNO. H. CLARK,
SAML. H. SEAMAN,
CORNELIUS H. DELAMATER.

188 Sworn to this 20th day of June, A. D. 1877, before me, as to Clark and Seaman, and the 21st day of June, 1877, as to Delamater.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

This bond approved as to form and amount and sufficiency of surety. Dated New York, June 21st, 1877.

SCUDDER & CARTER.
Libellants' Proctors.
SAMUEL BLATCHFORD.

(Endorsed:) United States circuit for the southern district of New York, in the second circuit. John S. Weeks and others against The Steamer New Orleans, her tackle, &c. Bond for damages and costs on

appeal. Man & Parsons, proctors for appellants, 56 Wall street, N. Y. Filed this 22d day of June, 1877.

Know all men by these presents that we, John S. Weeks, James W. Fitch, John Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants, are held and firmly bound unto the claimants, John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, in the sum of two hundred and fifty dollars, to be paid to the said claimants, their heirs, executors, administrators or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the thirteenth day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

189 Whereas John S. Weeks and others, as appellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the fourth day of June, 1877, in a suit in which John S. Weeks and others are libellants, against The Steamer New Orleans, her tackle, &c.:

Now, therefore, the condition of this obligation is such that if the above-named appellants, John S. Weeks and others, shall prosecute said appeal to effect and pay all costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force *force* and effect.

JOHN S. WEEKS AND OTHERS,
Libellants.
By EDWARD H. LOUD, *Agent.* [L. S.]
EDWARD H. LOUD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 19th day of July, 1877, before me.

[L. S.]
SAM'L B. CALDWELL,
Notary Public, Queens County, N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward H. Loud, being duly sworn, doth depose andsay that he resides in the eastern district of New York, at 423 Sixth street, Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDWARD H. LOUD.

Sworn to this 19th day of July, A. D. 1877, before me.
SAM'L B. CALDWELL,
Notary Public, Queens County, N. Y.

This bond approved as to form and amount and sufficiency of surety. Dated New York, July 21, 1877.

MAN & PARSONS,
Proctors Respondents.

190 (Endorsed:) United States circuit court for the southern district of New York, in the second circuit. John S. Weeks et al.,

appellants, v. The Steamer New Orleans, &c., John H. Clark, appellees. Bond for costs on appeal. Scudder & Carter, proctors for appellants. Filed this twenty-first day of July, 1877.

Circuit court of the United States for the southern district of New York.

THE STEAMER NEW ORLEANS, HER ENGINES, tackle, apparel, and furniture, John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants and appellants.

vs.

JOHN S. WEEKS, JAMES W. FITCH, JOHN KENNISTON, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants and appellees.

To the honorable the circuit court of the United States for the southern district of New York:

The petition of appeal of John H. Clark, Samuel H. Seaman,
191 Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants of the steamer New Orleans, above named, respectfully shows:

That on or about the 28th day of September, 1874, the above-named libellants filed their libel in the district court of the United States for the southern district of New York, against the steamer New Orleans, her engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in the said vessel, in a cause of collision, civil and maritime, in which said libel it was alleged and prayed as therein contained, to which said libel these petitioners refer for the contents thereof.

That thereafter, and on or about the 24th day of October, 1874, the petitioners, claimants of the said steamer New Orleans, having executed the necessary stipulations for costs and value, filed their claim and answer alleging as therein contained, and insisting that the said steamer New Orleans was not liable for the damages claimed by said libellants, and praying that the said district court would, as against the appellees, pronounce against the said libel and condemn the libellants in costs, as will more fully appear on reference to said answer, and to which for the contents thereof the petitioners ask leave to refer.

That thereafter the said cause came on to be heard before the Hon. Samuel Blatchford, sitting as judge of the said district court, on the 5th day of January, and the 10th day of March, 1875, upon the allegations and proofs adduced by the respective parties; and the said judge having advised thereon, on or about the 31st day of May, 1875, made a decretal order or sentence bearing that date, that the libellants recover in said cause against the said steamer, her engines, tackle, apparel, and furniture, the damages by the libellants sustained by reason of the said collision, and that it be referred to a commissioner of the said court to ascertain and compute the amount of such damages, and to report there-

on to the said district court, as by reference to said decretal order will appear.

192 That the said reference was taken to Edward L. Owen, esq., one of the said commissioners, and that such proceedings took place before him as that on or about the 24th day of March, 1877, he made his report bearing that date, which report was, on or about the 27th day of March, 1877, filed in the office of the clerk of the said district court; that both the petitioners and the said libellants took exceptions to the said report, and that such proceedings were thereupon had upon the said exceptions as that, the same having been argued, on or about the 11th day of June, 1877, a final decree was made by the said judge, and entered in the said cause in the said district court, allowing certain of the exceptions filed by each party, and disallowing the others, and ordering, adjudging, and decreeing in substance and effect that the libellants recover in the said cause against the said steamer New Orleans, her engines, tackle, apparel, and furniture, the sum of $15,904.98, for damages and interest, and the further sum of $690.67 for costs, making altogether the sum of $16,595.65, and that the said steamer New Orleans, her engines, tackle, apparel and furniture, be condemned therefor, as on reference to said decree will more fully appear.

And the petitioners are advised and believe and insist that the said decree is erroneous, for that the said libel should have been dismissed as against the said steamer New Orleans, her engines, tackle, apparel, and furniture, with costs; and also for that, if the said libellants were entitled to recover at all, the said exceptions so filed by the petitioners, and certain other exceptions taken by them in the proceedings before the said commissioner, should have been sustained.

Wherefore the petitioners, for these and other reasons, appeal from the whole of the said decree of the district court to the next circuit court to be held in this district, and on the said appeal they pray that the said cause may be heard anew upon the pleadings and proofs in the said district court, and the proofs to be produced in the said circuit court, and that the record of all proceedings in the said cause may be returned to and heard anew in the said circuit court, and that

193 the said decree may be reversed with costs, and that such decree may thereupon be made as shall be just and proper in the premises.

MAN & PARSONS,
Proctors for Claimants and Appellants.

(Endorsed:) Circuit court of the United States for the southern district of New York. The Steamer New Orleans, &c., and others, appellants, vs. John S. Weeks and others, appellees. Petition of appeal. Man & Parsons, proctors for appellants, 56 Wall st., N. Y. Filed July 20, 1877.

194 Circuit court of the United States, southern district of New York, second circuit.

JOHN S. WEEKS, JAMES W. FITCH, JOHN Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants and appellants,

against

THE STEAMER NEW ORLEANS, HER ENGINES, tackle, apparel, and furniture, and John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants and appellants.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of the above-named appellants respectfully shows to the court:

That on or about the twenty-eighth day of September, in the year one thoutand eight hundred and seventy-four, the above-named libellants, John S. Weeks, James W. Fitch, John Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose exhibited their libel in the district
195 court of the United States for the southern district of New York, against the steamer New Orleans, her engines, tackle, apparel, and furniture, claiming damages to the amount of forty thousand dollars, and praying among other things that for the reasons set forth in said libel said steamer, her engines, tackle, apparel, and furniture might be condemned to pay the same and costs.

That such proceedings were thereupon had, that the above-named claimants, John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, appellees herein, on or about the twenty-fourth day of October, in the said last-mentioned year, duly intervened, claiming said steamer as owners thereof, and filed their answer to the said libel in the said district court, praying that said libel might be dismissed with costs, as by reference to said libel and said answer may more fully appear.

That said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on or about the fifth day of January, 1875, and the hearing thereof was continued on or about the tenth day of March, 1875, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, on or about the twenty-eighth day of May, 1875, made a decree or sentence in said cause, whereby it was, among other things, ordered, adjudged, and decreed that the libellants in said cause recover against the said steamer New Orleans, her engines, tackle, apparel, and furniture the damages by them sustained by reason of the matters alleged in their said libel, with costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages, and to report

thereon to that court, as by reference to said decretal order will more fully appear.

That such reference was proceeded with before Edward L. Owen, esq., one of said commissioners, who, on or about the twenty-seventh day of March, 1877, made his report to said court, bearing date the twenty-fourth day of March, 1877, whereby the damages sustained by
196 the libellants were found to be the sum of fifteen thousand nine hundred and ninety-seven dollars and ninety-seven cents.

That thereafter exceptions were filed to said commissioner's report by the libellants and claimants respectively, and on or about the twenty-first day of April, 1877, the same were argued before said judge of the district court by the advocates for the respective parties, and said judge having advised thereon, did, on or about the fourth day of June, 1877, make a final decree in said cause, whereby it was, among other things, ordered, adjudged, and decreed that the first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth exceptions of the libellants be overruled, and the tenth exception of the libellants be allowed, and the sum of six hundred dollars and interest thereon from November 10th, 1874, be allowed as damages to the libellants in addition to the amount reported by said commissioner; and that the first, second, third, fourth, sixth, seventh, and eighth exceptions of claimants be disallowed, and that so much of the claimants' exceptions be allowed as excepts to the allowance of one thousand dollars therein specified, and that that sum be deducted from the damages reported by said commissioner. And that said report as modified be confirmed, and that the libellants recover against the said steamer New Orleans, her engines, tackle, apparel, and furniture, for damages, interest, and costs, the sum of sixteen thousand five hundred and ninety-five dollars and sixty-five cents, and that said steamer, her engines, tackle, apparel, and furniture, be condemned therefor, as will more fully appear by said decree, to which reference is had for its contents.

And these appellants are advised and insist that said decree is erroneous, inasmuch as it does not award them their damages sustained by reason of the matters alleged in the first nine of their said exceptions to said commissioner's report, and in disallowing said exceptions, and in allowing so much of the claimants' exceptions as excepts to the allowance of one thousand dollars therein specified, and ordering that that sum be deducted from the damages reported by the said commissioner.

197 And these appellants, for these and other reasons, appeal to the next circuit court to be held in said district, from so much of the said decree of the said district court as overrules the first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth exceptions of the libellants to the report of the said commissioner, and also from so much thereof as orders that so much of the claimants' exceptions to said report be allowed as excepts to the allowance of one thousand dollars therein specified, and that that sum be deducted from the damages reported by the said commissioner; and on said appeal these appellants intend to have the said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other and further proofs to be introduced in the said circuit court.

And these appellants pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed in the respects aforesaid, and such other decree thereupon made as to the said circuit court shall seem just, and that the appellees may

be condemned to pay to these appellants their costs and damages in the premises.

SCUDDER & CARTER,
Proctors for Libellants and Appellants.

(Endorsed:) U. S. circuit court. John S. Weeks et al., libellants and appellants, vs. The Steamer New Orleans, her engines, &c., John H. Clark et al., claimants and appellants. Petition of appeal. Scudder & Carter, libellants and appellants' proctors. Filed July 20, 1877.

Printed matter correct. Dated April 1, 1878.

SCUDDER & CARTER,
Proct. for Lib'l'ts.
MAN & PARSONS,
Proct. for Cl'm'ts.

198 *Additional testimony on behalf of claimants.*

U. S. circuit court, southern district of New York.

JOHN A. WEEKS ET AL.
vs.
THE STEAMSHIP NEW ORLEANS, HER tackle, &c.

Deposition of witness produced, sworn, and examined before me, Stanley G. Leathem, a notary public for the State of New York, in and for the city and county of New York, this tenth day of May, A. D. 1878, on the part of the claimant.

Mr. John E. Parsons appeared as counsel for the claimants, &c. Mr. Henry J. Scudder appeared as counsel for the libellants, &c.

GEORGE H. OBERG called and sworn on behalf of the claimants, and he did thereupon depose and say and testify as follows: I
199 am thirty-two years of age; I was examined as a witness for the claimants, and gave a deposition nearly four years ago in this suit.

1. Q. Was there a talk among the crew of the Allie Bickmore about the collision shortly after it took place?

(Objected to as immaterial.)

A. Yes, sir; so far as I can recollect, about an hour, probably not that much, after the collision.

2. Q. And where was the talk?

A. On deck, about midships.

3. Q. Where was the captain at this time?

A. As far as I recollect, he was aft on the house.

4. Q. Did he come up to where you were?

A. No, sir.

5. Q. Did he then or shortly afterwards?

A. No, sir.

6. Q. Did you have a talk with him that day about that collision?

A. Yes; we had a talk.

7. Q. Where was it that the captain spoke to you?

A. After the two vessels came together the captain was standing aft, and I was at the wheel.

8. Q. Now, was this before or after you had the talk with the crew?

A. This was before.

9. Q. What did the captain say to you?

A. I can't recollect what was exactly said then at that time.

10. Q. When did the captain have a talk with you, that you can remember?

A. He did ask me some questions at the time, but I can't recollect what he did ask me about.

11. Q. Do you recollect the captain asking you at any time what was the order which the second mate gave you?

(Objected to.)

A. Well, he asked me about that.

200 12. Q. When did he ask you about that?

A. It was some time after that again.

13. Q. Was it the same day of the collision?

A. Oh! yes, sir.

14. Q. How long after the collision was it?

A. Perhaps an hour or so, may be a little more.

15. Q. Where was he when he asked you this, and where was you?

A. Was on deck somewheres.

16. Q. Can't you remember whether this was before or after the talk you had with the crew?

A. Well, as well as I can recollect, it was before.

17. Q. What did the captain ask you?

(Objected to.)

A. He asked me if I got an order from the second mate to luff up.

18. Q. What did you tell him?

(Objected to.)

A. I told him, yes; he asked me if she did luff, and I said she did.

19. Q. What did he say to you after that?

(Objected to.)

A. He said that that was not right.

20. Q. What else?

A. Well, he said something that the ship ought not to have luffed; that if she had kept off—well, I can't recollect about what he did say, but something like that.

21. Q. Did he say what would have happened if you had kept off?

(Objected to.)

A. I don't remember he said anything about that.

22. Q. Did the captain at this time say anything, and, if

201 so, what about, whether you should tell anybody that the second mate gave the order to luff?

A. He said not to say anything about it.

Cross-examination:

X. 1. Q. Why did you not state this on your former examination?

A. Well, I was not questioned anything about it; and I never thought of it myself.

X. 2. Q. When did you first think then to tell it?

A. Well, it was some time afterwards, but I forget the time.

X. 3. Q. To whom did you first tell it?

A. I believe I told Mr. Seaman the first; but where I was at the time the conversation came about it, I cannot recollect now.

X. 4. Q. The Mr. Seaman to whom you told this to is now sitting here, and is one of the owners of the New Orleans?

A. Yes.

X. 5. Q. In whose employ are you now?

A. Clark & Seaman's.

X. 6. Q. Have you been in their employ steadily since this collision?

A. No, sir.

X. 7. Q. Running back from to-day right steadily how long have you been in their employ?

A. Three months—and am on the Hudson.

X. 8. Q. Prior to this three months how long were you out of their employ?

A. A little over six months, I believe.

X. 9. Q. What did you do during that six months?

A. On another steamer.

X. 10. Q. How long from to-day back is it since you told Mr. Seaman this story?

A. About four years now.

X. 11. Q. Was it before you were examined or after?

A. After.

X. 12. Q. When the captain told you not to say anything 'bout it who was present?

202 A. All were on the deck; but I can't tell whether the second mate was standing alongside me or on the deck, he was somewhere on deck; as far as I can remember I was not doing anything at all then.

X. 13. Q. Where was the steamship at this time?

A. Lying close by.

X. 14. Q. Had she taken you in tow at this time?

A. I can't recollect whether she had taken us in tow at that time.

X. 15. Q. How long after the collision before the steamship took you in tow?

A. A little more than two hours after.

X. 16. Q. Now, are you sure that any one was by when the captain told you this?

A. That I can't recollect; there was somebody around by, who I don't recollect.

X. 17. Q. Do you remember the mate's name of the Allie Bickmore?

A. No, sir.

X. 18. Q. Either of the mates?

A. Something like Camden.

X. 19. Q. Had the schooner a deck-load of lumber?

A. Yes, and it was piled up five, six, or seven feet.

X. 20. Q. Was she flush deck or quarter deck?

A. Yes, short quarter deck.

X. 21. Q. How high was the quarter deck?

A. The quarter deck raised two or three feet above the main deck; when I stood at the wheel I stood on the main deck, two or three feet below the quarter deck.

Redirect:

1. Q. Did the lumber prevent you seeing forward?

A. No, sir; it was not so high as to prevent any sight from me.

GEORGE H. OBERG.

Subscribed and sworn to before me this 10th day of May, 1878.

[L. S.] S. G. LEATHEM,

Notary Public, New York Co.

203 UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, Stanley G. Leathem, a notary public for the State of New York, in and for the city and county of New York, duly commissioned and sworn,

and duly authorized by virtue of the acts of Congress of the United States of America to take depositions and to administer oaths in civil causes pending in the courts of the United States, do hereby certify that on the tenth day of May, A. D. 1878, I was attended by the respective proctors in the cause in the caption of the foregoing deposition named, and by the witness George H. Oberg, who was cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition of said witness was reduced to writing by me in the presence of said witness, and the same was read to said witness, whereupon he subscribed the same in my presence.

And I further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this tenth day of May, A. D. 1878, and of the Independence of the United States the one hundred and second.

S. G. LEATHEM,
Notary Public, New York Co.

204 *Bill of exception.*

Circuit court of the United States, southern district of New York.

JOHN S. WEEKS, JAMES W. FITCH, JOHN KENNISTON, ABIEL GOVE, JAMES BLISS, LUTHER A. ROBY, WILLIAM H. BICKMORE, JESSE HOSMER, ISAAC FOUNTAIN, JOHN STRONG, S. H. JACKSON, W. A. ELWELL, LEWIS OGIER, H. U. LOUD, E. H. LOUD, GEORGE W. GILCHRIST, GEORGE CORNISH, D. B. EVERETT, and THOMAS ROSE, libellants and appellees
against
THE STEAMER NEW ORLEANS, HER ENGINE, tackle, apparel, and furniture, and JOHN H. CLARK, SAMUEL H. SEAMAN, CORNELIUS H. DELEMATER, JOHN BAIRD, and ALFRED MOULTON, claimants and appellants.

The above-entitled cause came on for trial at a circuit court of the United States in and for the southern district of New York, in the second circuit, on June 14, 1879, before the Hon. Morrison R. Waite, Chief Justice of the United States, temporarily assigned to hold such
205 circuit court, on the appeals of both the libellants and the claimants from the final judgment of the district court of the United States for the southern district of New York, entered in the cause on June 11th, 1877.

And thereupon the advocate for libellants read the libel and the advocate for the claimants read their answer, all as they are contained in the apostles in the cause transmitted from the said district to the said circuit court.

And thereupon the advocates for the respective parties read the testimony taken on their behalf on the trial in the said district court, both that taken orally and that taken by depositions, all as contained in the said apostles, which are to be annexed to and form part hereof, each reading the testimony on behalf of the party represented by him direct and redirect, and the cross and recross examination of the opposing

witnesses; and the advocates for the respective parties also read the exhibits and documentary evidence introduced on behalf of such parties, respectively, upon the trial in the district court as trans-
206 mitted by the said apostles.

And thereupon the advocates for the claimants read the additional testimony taken on their behalf in this court, to wit, the deposition of George H. Oberg, the advocate for the claimants reading the direct and redirect examination of the witnesses, and the cross and recross examination being read by the counsel for the libellants, which is hereto annexed.

And thereupon, further, all the evidence taken before Edward L. Owen, esq., a commissioner of this court, upon the reference to him as transmitted by the said apostles, was read by the advocate for the respective parties by whom the same was offered upon the said reference, each party reading the testimony direct and redirect of the witnesses offered by him, and the cross and recross examination of the opposing witnesses and each reading in evidence the exhibits and documentary evidence introduced by him upon such reference.

And thereupon the advocate for the claimants insisted that the direct testimony given by the libellant Abiel Gove, in a suit in Phila-
207 delphia, in which he and others were defendants, as marked for identification June 21, 1876, by the said commissioner, was competent testimony upon such reference and should not have been rejected by the said commissioner, but should have been received and considered by him, and that the same should be received in evidence and considered by the Chief Justice upon the trial before him.

And thereupon the report of the said commissioner and the exception taken by each party to the same, and the final decree of the said district court having been read, the claimants did submit their requests for findings to the said Chief Justice, which is hereto annexed.

And thereupon due deliberation having been had by the said Chief Justice, he did sustain the objection to the testimony so given by the libellant Abiel Gove in the said Philadelphia suit and did reject the same, and to his ruling in that regard the claimants by their
208 advocates duly except, and the said Chief Justice did make his findings and decision which are hereto annexed, and did refuse to find otherwise upon the request so presented by the said claimants.

And thereupon the claimants, by their said counsel, did make and file exceptions to the findings and refusals to find of the said Chief Justice, which are hereto annexed.

And thereupon and inasmuch as the said several matters produced and given in evidence on the trial in the said circuit court and the said exceptions do not appear by the record of the decree of the said Chief Justice, the said claimants by their counsel have prepared and caused this bill of exception to be settled as a record thereof, according to the form of the statute in such case made and provided and the course of practice of the court, and ordered on file by the judge thereof.

M. R. WAITE. [SEAL.]

We hereby consent that the above be settled as the bill of exceptions on appeal herein.

SCUDDER & CARTER,
Sol's for Lib'ts.
MAN & PARSONS,
Proctor' for Cl'i.

209 (Indorsed:) U. S. circuit court, so. dist. of New York. John S. Weeks, com., vs. The Steamer New Orleans, her tackle, &c. Bill of exceptions. Man & Parsons, cl'ts' proctors, 56 Wall st.

Due and timely service of a copy of within bill of exceptions is hereby admitted this 23 day of September, 1879.

SCUDDER & CARTER,
Lib'lts' Proc.

U. S. circuit court. Filed Oct. 3, 1879. John L. Davenport, clerk.

210 United States circuit court, southern district of New York.

JOHN S. WEEKS ET AL., LIBELLANTS AND APpellants,
versus
THE STEAMER NEW ORLEANS, JOHN H. CLARK, et al., claimants and appellants.

Findings of fact proposed by the claimants.

1. A few minutes after five o'clock on the morning of September 6, 1874, a collision took place between the libellants' schooner Allie Bickmore and the claimants' steamer New Orleans. The collision took place in the Atlantic Ocean about forty miles southeast from Cape Henlopen.

2. The schooner was on a voyage from Fernandina, Florida, to New York, with a cargo of lumber. The steamer was on her regular trip from New York to New Orleans.

3. Prior to the collision the course of the two vessels was very
211 nearly opposite, one to the other; the schooner being bound northward, and heading a little east of south; the steamer bound southward, and heading a little west of south.

4. The wind was from the southward and eastward, free for the schooner; it was light. The schooner was making from two to three knots an hour; the steamer was sailing at her ordinary speed of about ten and a half knots an hour.

5. The schooner's lights were burning. But it was after daybreak; was clear and light; and vessels could be seen at a distance of two or three miles.

6. No change was made in the course of the steamer down to the collision; immediately prior to the collision her wheels was put hard aport, but her course was changed scarcely at all—not over a quarter to half a point.

7. The steamer was seen from the schooner when about three miles distant. At this time each vessel bore on the starboard bow of the other; and if their respective courses had been continued, the schooner would have passed the steamer on her starboard side one-eighth of a mile distant. Instead of keeping her course the schooner luffed, when the vessels were from half a mile to a mile apart; the result was to bring her across the course of the steamer, and in consequence the steamer struck her, hitting her on her port bow near the cathead, the line of the cut inclining towards the stern at an acute angle with the keel of the schooner.

8. Down to a short time before the collision the steamer had a lookout stationed on her forecastle. He was then called to help in washing decks, and the man at the wheel was directed to keep a lookout.

9. The wheel was in the pilot-house, which was situated on top

212 of the forward house, eight or nine feet above the main deck, and about eighty feet from the stem of the vessel, with nothing between to interrupt the sight.

10. The collision was due to the schooner's change of course; but for that the vessels would have passed each other safely and by a safe distance from each other. The steamer was in fault for want of a lookout at the time, but that did not contribute to cause the collision.

CONCLUSIONS OF LAW.

1. It was the duty of the schooner to keep her course. The law required the steamer to avoid the schooner, but it imposed upon the schooner a corresponding obligation not to change her course.

2. The schooner having caused the collision by her change of course, the steamer was not responsible, and the libel should have been dismissed with costs.

Findings of fact proposed by the claimants as to the damages sustained by the collision.

1. Immediately upon the collision the captain of the schooner and her agents in New York put themselves in communication with Messrs. Clark & Seaman, who represented the claimants.

2. The question of liability was then open; but, as a claim was made against the steamer, Mr. Seaman at once said to the schooner's captain that if he would have the schooner repaired by Pusey, Jones & Co., of Wilmington, Del., there would be no contest about the amount.

3. No concern stood higher for doing this kind of work than Pusey, Jones & Co. The schooner's captain made the excuse that the claimants must first admit their liability. Under this pretense he sought to extricate himself from complying with the claimants' proposal.

213 He told Mr. Seaman that he was going to take the opportunity to put his vessel in complete order; that he wanted everything made just as good as could be. He employed the firm of Birely, Hillman & Streaker, of Philadelphia, without any contract to limit the amount or to fix the time within which the repairs should be made; and the result was that for work which Pusey, Jones & Co. would have done for $4,300 the commissioner has reported $8,526.47.

Birely, Hillman & Streaker charged, and the commissioner allowed, for much work which was not due to the collision; and the charges were not at all supported by the work which was done.

4. Before the repairs were commenced the schooner was towed about in a wholly unjustifiable way. The commissioner allowed for towage, wharfage, etc. All of these items would have been saved if Pusey, Jones & Co. had been employed; and twenty days were thus needlessly consumed for which the commissioner allowed demurrage.

5. The commissioner allowed the amount of a ship-chandler's bill. It included for ratline, spun-yarn, fenders, deep-sea line, burgee, rope, hose, captsan-bars, burning oil, and for many other articles which were not lost by the collision.

6. Three weeks were ample to make the repairs.

7. The steamer was stronger after the collision than before.

8. Subsequent to the collision the schooner was lost. She still continued to belong to the same owners. The mere fact of a collision, when the damage is fully repaired, does not injure the value of the vessel.

9. The entire damages caused to the schooner and her cargo by the collision did not exceed the sum of $8,000.

214 10. So much of the cargo of lumber on the schooner as was not actually lost was not materially damaged; it was sold prior to the collision and was taken by the purchasers without any abatement of price.

11. The commissioner rejected the sworn declarations of one of the principal owners of the schooner on the subject of the value of the repairs.

CONCLUSIONS OF LAW.

1. Under any circumstances, if the steamer is held liable, a new reference should be ordered, with directions to the commissioner to consider any evidence which shall be offered of the declarations of the owners of the vessel on the subject of repairs.

2. Under no circumstances, if the steamer is liable at all, should the damages allowed exceed the sum of $8,000.

MAN & PARSONS,
Proctors for Claimants.

215 JOHN S. WEEKS ET AL.
vs.
THE STEAMER NEW ORLEANS, &C.

Facts found by the court.

1. A little after five o'clock in the morning of the 6th of September, 1874, a collision occurred between the schooner Allie *Blackman* [*Bickmore] owned by the libellants, and the steamer New Orleans, in the Atlantic Ocean, about forty miles southeasterly from Cape Henlopen.

2. The schooner had a carrying capacity of over six hundred tons, though she registered only three hundred and ninety or thereabouts. She was less than a year old, and bound on a voyage from Fernandina, Florida, to New York, with a full load of pine lumber, stowed below and on deck.

3. The steamship was 245 feet long, and of 1,448 tons burden. She was on one of her regular trips between New York & New Orleans.

216 4. When the collision occurred it was broad daylight, and a vessel without lights might have been seen at least two miles away. The wind was very light from the southward and eastward, but a considerable swell was rolling from the southeast.

5. The course of the schooner was about NE. by N. She had all sails set, but there was not wind enough to keep them full, and she was not making more than a mile and a half or two miles an hour. Her lights were properly set and burning, and she was in all respects well equipped and manned.

6. The course of the steamer was about S. by W. ½ W., and her speed eleven miles, or a little more, an hour. This was full speed. About twenty minutes before the collision her lookout was withdrawn from his station on the forecastle and set to work, with all the other men then on watch, washing decks. The second officer, whose watch it was, was with his men superintending their work. From the

[*In pencil.]

217 time the lookout was withdrawn there was no one where he could in any respect perform that duty except the man at the wheel, and he did not discover the schooner until his attention was called to her by the mate at the time and in the manner hereinafter stated.

7. When the vessels were two or three miles apart the steamer was discovered, and duly reported by the lookout on the schooner. From that time she was closely watched. The schooner was kept steadily on her course until the steamer was not more than seven or eight hundred feet away, when, the danger of collision being imminent, the second mate, who was on deck, gave an order to luff, and at the same time called out an alarm to the steamer; but before any material change in her course had been made the vessels came together.

8. The schooner was not seen at all from the steamer until the second mate, hearing the cry of alarm which came from her, stepped from where he was standing on the main deck to the starboard side,
218 and saw her close upon him. He immediately ran up from the main deck into the wheel-house, where he ordered the wheel to port, at the same time assisting to port it over himself. The order to port aroused the captain, who was in a room opening out of the wheel-house, and he, without stopping to put anything on, opened his door, and, seeing the schooner, rang the proper bells to slow & stop. Before the course of the steamer was materially changed by the porting of the wheel, or her headway was sensibly affected, she struck the schooner on the port bow, between the stern and the cathead, and cut into her about twenty feet on a line but slightly angling across the keel. The wound extended very nearly to the foremast, and to within four feet of the keel.

9. In a short time the steamer took the schooner in tow and carried her to the Delaware breakwater. From there she was taken by a tug to Philadelphia, where she was unloaded, & her cargo taken on to New York. She was also put in repair and refitted at that port.

219 10. The account of damages as stated by the commissioner in his report is sustained by the evidence, except the item of one thousand dollars for damages to the starboard side. As to that the evidence shows that when the repairs were completed the vessel was in as good general condition as she was before the collision, and that if the bill of Bisely, Hillman & Streaker is paid in full without the deduction of six hundred dollars for increase of value, full compensation will be made for any injury to the starboard side.

CONCLUSION OF LAW.

1. That the collision was caused solely by the fault of the New Orleans in not keeping a sufficient lookout, and in not seeing the schooner in time to keep out of her way.

2. That the libellants are entitled to recover for the amount of the decree below with interest on $14,026.92 from the date of that decree, at the rate of six per cent. per annum.

220 As both parties have appealed & the decree below is sustained, the costs of this court must be equally divided between the parties.

WAITE, *Ch. J.*

Opinion.

The facts as found are clearly established by the evidence, and satis-

fy me beyond all doubt that the failure of the steamer to keep a sufficient lookout was the sole cause of the collision. The order on the schooner to luff could not have contributed at all to the accident, and if it did, made as it was, in extremis, was not, in law, a fault. With her sails shaking for want of wind, and the sea rolling, it is impossible to believe that any change of her wheel could have effected materially her course in the short time that intervened between the hail from her deck heard on the steamer and the coming together of the vessels. When this hail was given, it would take the steamer
221 less than a minute, at the speed she was going, to reach the schooner. This is shown not only by the estimates of the distance made at the time by those on both vessels, but by what transpired meanwhile. As soon as the second mate on the steamer heard the hail he looked over the starboard side, saw the schooner, ran from the deck to the wheel-house, gave the order to port, and himself helped to put the wheel over; but before the steamer, at her rate of speed and steering easily, changed her course materially, the collision occurred. The captain, as soon as he heard the order to port, got up, opened the door from his room into the wheel-house, saw the danger, & rang the bells to stop & back; but before any perceptible change in the motion of the steamer, the vessels were together. The order to luff was not given until just about the time of the hail from the schooner and probably a little after. The second mate says his order to luff was given and the next thing "she struck us;" and this is the effect of all the evidence upon this branch of the case. I place
222 no confidence whatever in anything said by Oberg or Potter in conflict with the other testimony. They are very clearly unreliable.

Upon the questions arising on the exceptions to the commissioner's report, I think the judge below was right in his rulings. An injured vessel is not necessarily bound to employ such persons to make her repairs as those in fault for her injuries see fit to recommend.

In this case the claimants would not admit their liability and did not offer to make the repairs themselves. All they did was to say that if Pusey, Jones & Co. made the repairs, and they were liable, they would not dispute the bills. The tender of Pusey, Jones & Co. to do the work was not communicated to the libellants until after the schooner had been unloaded, and Bisely, Hillman & Stracher employed to do the work. While the amount of the bill seems large it is sustained by the evidence.

The libellants disputed it and would not pay until they had been sued and judgment recovered against them.

223 While this judgment may not conclude the claimants, it tends to show there was no collusion. The offer of Pusey, Jones & Co. to do the work for a less sum than it actually cost is not conclusive evidence that it cost too much. If the libellants show that they acted in good faith; that no more was done than was necessary to put their vessel in as good condition as she was before the collision, and that the prices paid were reasonable, they have made out their case. This, I think, they have done.

As to the allowance of $1,000 for damages to the starboard side, I think with the district judge that after the repairs were completed the vessel was on the whole in as good a condition as she was before she was injured. The port side was left in a better condition, and if the extra expense thus incurred is allowed and paid, it will compensate for any unrepaired damages to the other side.

The evidence as to what Gove swore to on the trial of the suit instituted by Bisely, Hillman & Stracher to recover the amount of
224 their bill was properly ruled out. He testified to what he believed to be errors in the bill, but the result showed he must have been mistaken, as judgment was given against him notwithstanding his evidence. Under such circumstances, his statements, even though made upon oath, can hardly be treated as admissions to overcome positive evidence as to what the facts really were.

This disposes substantially of all the questions relied upon by the claimants in their argument on this appeal. The demurrage allowed is, I think, sustained by the evidence, as is also the ship-chandler's bill.

The exceptions to the allowances for storage of lumber in Philadelphia, for transporting cargo to New York, and for the loss of freight have not been insisted on here.

None of the exceptions taken by the libellants should, in my opinion, be allowed, except the 10th, which relates to the abatement of $600 from the bill of Bisely, Hillman & Stracher on account of the in
225 creased value of the schooner after her repairs. That has already been considered. As to the interest on the sum allowed for demurrage, I think under the circumstances it was properly rejected. The amount allowed is sufficient under the evidence to cover interest to the date of the report.

On the whole, I think the decree of the district court ought not to be disturbed. An entry may be prepared giving judgments in favor of the libellants for the amount of the decree below, and interest at six per cent. on the amount in the aggregate of all the different items of damage allowed by the district court, exclusive of the interest allowed & put into the decree. This amount I make $14,026.92. It is, however, subject to correction in case any errors shall be discovered. The decree will be for: 1. Decree below, 15,904.98. 2. Int. on $14,026.92 from June 11, 1877, to date of decree. 3. Costs in the district court.

As both parties have appealed and the decree of the district court has been sustained the costs in this court will be divided.

226 (Endorsed:) Weeks et al. vs. New Orleans. Opinion, &c. Waite, Ch. J. Filed July 21, 1879.

227 U. S. circuit court, southern district of New York.

JOHN S. WEEKS ET AL., LIBELLANTS AND appellants,
versus
THE STEAMER NEW ORLEANS, JOHN H. Clark et al., claimants and appellants.

The claimants except to the findings and decision of the learned Chief Justice in this cause as follows:

1. To so much of the fifth finding of fact as is to the effect that the course of the schooner was about northeast'ly north, and that the schooner was not making more than a mile and a half or two miles an hour; the claimants maintaining that her course was something more to the northward, and that her speed was about two or three knots an hour.

2. To so much of the seventh finding of fact as is to the effect that the schooner was kept steadily on her course until she was not more than seven or eight hundred feet away from the steamer, when,

228 the danger of collision being imminent, the second mate gave the order to luff, and that before any actual change in the course of the schooner had been made the vessels came together; the claimants maintaining that when the schooner luffed the danger of collision was not imminent, and that the vessels were not at the time from a half a mile to a mile apart, and that there was a material change in the course of the schooner before the collision.

3. To so much of the tenth finding of fact as is to the effect that the account of damages as stated by the commissioner in his report is sustained by the evidence with the exceptions stated.

4. To the first conclusion of law, and to each and every part thereof.

5. To the second conclusion of law, and to each and every part thereof.

6. And the claimants further except to the failure and refusal of the learned Chief Justice to find the third finding of fact as proposed by the claimants.

7. They except in like manner to the failure and refusal of the learned Chief Justice to find the fourth finding of fact as proposed by them.

229 8. They except in like manner to the failure and refusal of the learned Chief Justice to find the seventh finding of fact as proposed by them.

9. They except in like manner to the failure and refusal of the learned Chief Justice to find the tenth finding of fact as proposed by them so far as the same was not found by him.

10. They except in like manner to the failure and refusal of the learned Chief Justice to find the first conclusion of law as proposed by them.

11. They except in like manner to the failure and refusal of the learned Chief Justice to find the second conclusion of law as proposed by them.

12. And the claimants further except as follows: To the failure and refusal of the learned Chief Justice to find the first finding of fact as to damages as proposed by them.

13. To the failure and refusal of the learned Chief Justice to find the second finding of fact as to damages as proposed by them.

14. To the failure and refusal of the learned Chief Justice to find the third finding of fact as to damages as proposed by them.

15. To the failure and refusal of the learned Chief Justice to
230 find the fourth finding of fact as to damages as proposed by them.

16. To the failure and refusal of the learned Chief Justice to find the fifth finding of fact as to damages proposed by them.

17. To the failure and refusal of the learned Chief Justice to find the sixth finding of fact as to damages as proposed by them.

18. To the failure and refusal of the learned Chief Justice to find the ninth finding of fact as to damages as proposed by them.

19. To the failure and refusal of the learned Chief Justice to find the eleventh finding of fact as to damages as proposed by them.

20. To the failure and refusal of the learned Chief Justice to find the first conclusion of law as to damages as proposed by them.

21. To the failure and refusal of the learned Chief Justice to find the second conclusion of law as to damages as proposed by them.

And as to so many of the above exceptions as relate to the
231 action of the learned Chief Justice in respect to matters of fact the claimants respectfully submit that the libel and testi-

239 Supreme Court of the United States.

THE STEAMER NEW ORLEANS, HER ENGINES, tackle, &c., John H. Clarke, Samuel H. Seaman, Cornelius H. Delamata, John Baird, and Alfred Moulton, claimants and appellants,

vs.

JOHN S. WEEKS, JAMES W. FITCH, JOHN Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogin, H. W. Lord, E. H. Lord, George W. *George* W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose.

To the honorable the Supreme Court of the United States:

The petition of appeal of John H. Clarke, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants
240 of thes teamer New Orleans, above named, respectfully shows:

That on or about the 28th day of September, 1874, the above-named libellants filed their libel in the district court of the United States for the southern district of New York, against the Steamer New Orleans, her engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in the said vessel, in a cause of collision, civil and maritime, in which said libel it was alleged and prayed as therein contained; to which said libel these petitioners ask leave to refer for the contents thereof.

That thereafter, and on or about the 24th day of October, 1874, the petitioners, claimants of the said steamer New Orleans, having executed the necessary stipulations for costs and value, filed their claim and answer, alleging as therein contained and insisting that the said steamer New Orleans was not liable for the damages claimed by said libellants, and praying that the said district court would as against the ap-
241 pelees' pronounce against the said libel, and condemn the libellants in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof, these petitioners ask leave to refer.

That thereafter the said cause came on to be heard before the Hon. Samuel Blatchford, sitting as judge of the said district court, on the 5th day of January, and the 10th day of March, 1875, upon the allegations and proofs adduced by the respective parties, and the said judge, having advised thereon, on or about the 31st day of May, 1875, made a decretal order or sentence, bearing that date, that the libellants recover in said cause against the said steamer, her engines, tackle, apparel, and furniture, the damages by the libellants sustained by reason of the said collision, and that it be referred to a commissioner of the said court to ascertain and compute the amount of such damages, and to report thereon to the said district court, as by reference to said decretal order will appear.

That the said reference was taken to Edward L. Owen, esq.,
242 one of the said commissioners, and that such proceedings took place before him and that on or about the 24th day of March, 1874, he made his report bearing that date, which report was on or about the 27th day of March, 1877, filed in the office of the clerk of the said district court; that both the petitioners and the said libellants took exceptions to the said report, and that such proceedings were thereupon had upon the said exceptions as that the same having been

argued, on or about the 11th day of June, 1877, a final decree was made by the said judge and entered in the said cause, in the said district court, allowing certain of the exceptions filed by each party, and disallowing the others, and ordering, adjudging, and decreeing in substance and effect that the libellants recover in the said cause against the said steamer New Orleans, her engines, tackel, and apparel and furniture, the sum of $15,904.98 for damages and interest, and the further sum of $690.97 for costs, making altogether the sum of
243 $16,595.65, which on reference to said decree, will more fully appear.

That after such final decree had been entered your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, in the second circuit, and such proceedings were thereupon had in said cause in said court; that afterwards, and on the 5th day of September, 1879, a final decree was made and entered in said court ordering, adjudging, and decreeing, in substance and effect, that the said decree of the district court be in all things affirmed, and that the libellants recover in the said cause the sum of $15,904.98, and interest, from June 11th, 1877, at the rate of 6 per cent. per annum on the sum of $14,026.96, being so much thereof as is exclusive of the interest allowed by said district court, and amounting to the sum of $1,866.67, and together amounting to $17,771.05, and also the costs of the said district court taxed at the sum of $690.67.

And the petitioners are advised and believe and insist that
244 the said decree is erroneous, for that the said libel should have been dismissed as against the said steamer New Orleans, her engine, tackle, apparel, and furniture, with costs; and also for that if the said libellants were entitled to recover at all, the said exceptions so filed by the petitioners, and certain other exceptions taken by them in the proceedings before the said commissioner, should have been sustained.

Wherefore your petitioners appeal from the whole and every part of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and the proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear anew the said cause, and that the said decree of the said circuit court, and every part thereof, may be reversed, and
245 a decree made dismissing said libel with costs, or such other decree as to the Supreme Court shall seem just.

Dated New York, September 12th, 1879.

MAN AND PARSONS,
Proctors for Claimants for Steamer New Orleans.

To SCUDDER & CARTER Esq'r's.
Proc's' Lib'ts & Appellees.

246 (Indorsed:) Supreme Court of the United States. The steamer New Orleans, &c., vs. John S. Weeks et al., libellants. Copy. Petition of appeal. Man and Parsons, claim'nts' proctors, 56 Wall st., N. Y. U. S. circuit court. Filed Sep. 13th, 1879. John J. Davenport, clerk.

247 *Bond for damages and costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAMER NEW ORLEANS, HER ENGINES, tackle, &c., JOHN H. CLARK, SAMUEL H. SEAMAN, &c., claimants & appellants,
vs.
JOHN S. WEEKS ET AL., LIBELLANTS & APPELLEES.

Know all men by these presents that we, John H. Clark, of Yonkers, Samuel H. Seaman, of No. 114 Fort Green Place, in the city of Brooklyn, Cornelius H. Delamater, of No. 424 West 20th street, in the city of New York, and John Baird, of No. 324 Lexington avenue, in the city of New York, are held and firmly bound unto the above-named John S. Weeks, James N. Fitch, John Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jessie Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Faier, H. N. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants, in the sum of thirty-seven thousand dollars, to be paid to the said John S. Weeks & other', libellants, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the eleventh day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit by Morrison R. Waite, Chief Justice of the Supreme Court of the United States, holding circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JNO. H. CLARK. [L. S.]
SAMUEL H. SEAMAN. [L. S.]
CORN. H. DELAMATER. [L. S.]
JOHN BAIRD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 12th day of September, 1879, before me.

IRVING PARIS, JR.,
Notary Public, N. Y. Co.

248 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John C. Clark and Cornelius H. Delamater, being duly sworn, each depose and say that he resides in the southern district of New York;

that he is worth the sum of thirty-seven thousand dollars over and above all his just debts and liabilities.

CORN. H. DELAMATER.
JOHN H. CLARK.

Sworn to this 12th day of September, A. D. 1879, before me.
IRVING PARIS, JR.,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel H. Seaman, being duly sworn, doth depose and say that he resides in the eastern district of New York, and that he is worth the sum of thirty-seven thousand dollars over and above his just debts and liability.

SAM'L H. SEAMAN.

Sworn to before me this 12th day of September, 1879.
IRVING PARIS, JR.,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John Baird, being duly sworn, doth depose and say that he is a resident of the southern district of New York, and that he is worth the sum of thirty-seven thousand dollars over and above all his just debts and liabilities.

JOHN BAIRD.

Sworn to this 12th day of September, 1879, before me.
IRVING PARIS, JR.,
Notary Public N. Y. Co.

(Indorsed:) U. S. circuit court. The Steamer New Orleans, her engines, tackle, &c., claimants & appellants, vs. John S. Weeks et al., libellants and appellees. Bond for damages and costs on . Man & Parsons, claimants' proctors. U. S. circuit court. Filed Sept. 18, 1879. John I. Davenport, clerk.

We consent that the within bond be approved.
SCUDDER & CARTER,
Proc't for Lib'ts.

The foregoing bond is approved as to form and amount and sufficiency of the sureties.
SAM'L BLATCHFORD,
Circuit Judge.

SEPTEMBER 13, 1879.

249 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York in the second circuit.

To John S. Weeks, James N. Fish, John Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bichmore, Jessie Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. W. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants:

Whereas John H. Clark, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants of The Steamer New

Orleans, her tackle, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said John S. Weeks, James N. Fish, John Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Strong, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. A. Loud, E. H. Loud, George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants, against The Steamer New Orleans, her engines, &c., and have filed the security required by law, you and each of you are therefore
250 hereby cited to appear before the said Supreme Court at the city of Washington on the second Monday of October, 1879, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 13th day of September, in the year of our Lord 1879, and of the Independence of the United States the one hundred and third.

SAM'L BLATCHFORD.

(Endorsed:) Circuit court of the United States. The Steamer New Orleans, her engines, &c. against John S. Weeks et al. Citation. Man & Parsons, proct's for claimants, 56 Wall st., N. Y. C.

Due & timely service of the within citation is hereby admitted this 15th day of September, 1879.

SCUDDER & CARTER,
Proct's for Libell'ts.

U. S. circuit court. Filed Sept. 15, 1879. John I. Davenport, clerk.

251 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to two hundred and fifty, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Steamer New Orleans, her engines, tackle, &c., John H. Clarke, Samuel H. Seaman, Cornelius H. Delamater, John Baird, and Alfred Moulton, claimants & appellants, against John S. Weeks, James W. Fitch, John Kenniston, Abiel Gove, James Bliss, Luther A. Roby, William H. Bickmore, Jesse Hosmer, Isaac Fountain, John Shay, S. H. Jackson, W. A. Elwell, Lewis Ogier, H. W. Loud, E. H. Loud, *George* W. George W. Gilchrist, George Cornish, D. B. Everett, and Thomas Rose, libellants & appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 319. John H. Clark et al., claimants of the steamer New Orleans, her tackle, &c., appellants, vs. John S. Weeks, James W. Fitch, et al. S. New York C. C. U. S. Filed 11th October, 1879.

FILED
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16-13

WM. J. READ, Law and Job Painter, 116 Fulton Street, N. Y.

SUPREME COURT

OF THE UNITED STATES.

JOHN H. CLARK *et al*, Claimants of the Steamer New Orleans, &c., *Appellants*,

vs.

JOHN S. WEEKS, *et al.*, *Libellants and Appellees.*

No. 319.

Appellants' Brief.

This is an appeal in Admiralty from the affirmance by the Chief Justice, holding the Circuit Court for the Southern District of New York, of a decree made by Mr. Justice BLATCHFORD, when District Judge, against the appellants' steamer New Orleans, holding her liable for a collision with the appellees' schooner, Allie Bickmore.

The appeal presents two points: one on an exception upon the question whether it was the fault of the steamer which caused the collision; and the other (presented by bill of exceptions) on an exception to the rejection of evidence offered for the appellants upon the question of damages.

The decree of the District Court was entered on May 31, 1875 (fol. 53). By it the New Orleans was adjudged solely in fault, and it was referred to a Commissioner to compute the libellants' damages.

The Commissioner, on March 24, 1877, reported in the libellants' favor for $15,997.97 (fols. 129 to 139). Both parties excepted.

Libellants' exceptions, fol. 178.
Claimants' exceptions, fol. 180.

The District Court allowed some and disallowed others of the exceptions of each party, and on June 11, 1877, made a final decree for $15,682.37, with interest, in favor of the libellants (fols 182 and 184). Both parties appealed to the Circuit Court.

Claimants' appeal, fol. 191.
Libellants' appeal, fol. 195.

The cause came on for trial upon the appeals before the Chief Justice

on June 14, 1879 (fol. 204), and on August 30, 1879, he made his decree affirming the District Court, directing that the costs of the Circuit Court should be divided and set off each against the other.

On September 12, 1879, the appellants appealed to this Court (fol. 239).

The Chief Justice found (fol. 215) that the collision took place a little after five o'clock in the morning of September 6, 1874, in broad daylight, in the Atlantic Ocean, about forty miles southeasterly from Cape Henlopen, the course of the schooner at the time being about N. E. by N., she having all her sails set and making not more than a mile and a half or two miles an hour, the wind being from the southward and eastward, and the course of the steamer being about S. by W. $\frac{1}{2}$ W., and her speed eleven miles, or a little more, an hour, which was full speed. The Chief Justice found that the lookout of the steamer was withdrawn about twenty minutes before the collision, and that in consequence the schooner was not seen until just before the collision.

He further found that the steamer was discovered from the schooner when the vessels were two or three miles apart, and that the schooner was kept steadily on her course until the steamer was not more than seven or eight hundred feet away, when, the danger of collision being imminent, the second mate, who was on deck, gave an order to luff, and at the same time called out an alarm to the steamer; but that before any material change in her course had been made the vessels came together.

This finding (fol. 217) was excepted to (fol. 227) among others, and under the Act of Congress of February 16, 1875, raises the only point which the appellants claim the right to argue here upon the question of fault.

An exception to the rejection of evidence will be considered later.

The contention of the appellants in the District and Circuit Courts was, that it was not the absence of their look-out which caused the collision, and that if it contributed, the schooner was also in fault in changing her course.

The question of fault arises under Rules 20, 23 and 24 of the Act of April 29, 1864.

U. S. R. S., Section 4233.

"Rule twenty—If two vessels, one of which is a sail vessel and the "other a steam vessel, are proceeding in such directions as to involve "risk of collision, the steam vessel shall keep out of the way of the "sail vessel."

"Rule twenty-three :—Where by Rules seventeen, nineteen, twenty "and twenty-two, one of two vessels shall keep out of the way, the "other shall keep her course, subject to the qualifications of Rule "twenty-four."

"Rule twenty-four : In construing and obeying these rules, due "regard must be had to all dangers of navigation, and to any special "circumstances which may exist in any particular case rendering a "departure from them necessary in order to avoid immediate danger."

What the appellants claim is, that the change of course by the schooner (found as a fact by the Chief Justice), was when the vessels were much more than seven or eight hundred feet apart; that it was not, therefore, when the danger of collision was imminent, and that the distance was such as to allow for a material change in the position of the schooner before the vessels came together.

First Point.--The appellants respectfully submit that the order on the schooner to luff was when the vessels were about a mile apart; at all events when they were such distance apart that the schooner was not justified in changing her course; and that but for her doing so there would have been no collision.

1. That this was so, the appellants submit, is averred in the schooners' libel and was not in issue.

The allegation of the libel is: "That the said steamer was seen at a distance of three miles, and when *within a mile* of the said schooner, the bell of the latter was rung, and her crew shouted to the steamer to keep off."

Her log is to the same effect (fol. 40).

The Chief Justice found (fol. 217) that the order to luff *was at the same time* with this alarm.

2. "Within a mile" in the libel means about a mile. The context shows this, if there were any question about it. The libel reads: "That the steamer was seen at a distance of three miles, and when "within a mile of the said schooner the bell of the latter was rung, "and her crew shouted, &c."

3. Under the amendment of May 2, 1881, to General Admiralty Rule 8, made since the record in this cause was sent up (103 *U. S.* p XII.), the record should consist only of the pleadings, the findings of fact and conclusions of law thereon, the bills of exceptions, the final judgment or decree, &c. According to this rule, the evidence does not come before the Court, and the question presented, it is submitted, would be that of a finding of fact for a libellant upon a point which was not in issue by his libel, and in contradiction of his libel.

The appellants claim that this, if an error, is an error of law.

4. If this is not so, the appellants concede that they are concluded by the findings of the Chief Justice.

It is material to notice that the libel wholly ignores that the schooner did luff. Obviously it was her purpose that the fact should not appear.

5. If the evidence may be considered the appellants maintain that the luffing of the schooner was when the vessels were at a safe distance from each other; that it was by her luffing that the

schooner reached the point where she was struck, and that this was fault on her part.

Second Point.--Upon the hearing before the Commissioner the appellants offered in evidence certain sworn declarations made by Abiel Gove, the owner of one-fourth of the schooner, in reference to the value and amount of the repairs put upon her, &c.

Fols. 168 to 178.

They were excluded by the Commissioner, the appellants excepting (fol. 111).

It appears by the bill of exceptions that upon the trial in the Circuit Court the appellants insisted that these sworn declarations were competent testimony, but that the Chief Justice sustained an objection and rejected the testimony the appellants again excepting.

Fols. 207 to 208.

The appellants respectfully submit that this was error. Gove was the acting owner of the schooner, and one of the libellants.

1. The repairs caused by the collision were made by a firm of Birely, Hillman & Streaker, in Philadelphia. The libellants objected to their bill. They brought suit. Mr. Gove was examined as a witness. The gist of his testimony which the appellants offered in evidence was that Birely, Hillman & Streaker had charged for work and materials to a large amount which were not furnished.

It is respectfully submitted that the declarations of a party are competent testimony against him; that the evidence should have been received, and that such weight should have been given to it as to the Commissioner and to the Court seemed proper.

The appellants claim that the testimony was true; if true, the decree should be very largely reduced in amount

It is not contended that the libellants were estopped by this testimony—simply that it was error to hold that it was incompetent, and could not be considered. If it were competent, the Commissioner might have reported in accordance with it.

The ground upon which the Chief Justice held that the declarations of Gove were properly rejected, was, that the result showed that he must have been mistaken; that judgment was given against him, notwithstanding his evidence (fol. 224).

It is respectfully submitted that this does not justify the exclusion of the testimony.

The appellants were not parties to the Birely, Hillman & Streaker suit, and were in no way affected by its result. For aught that appeared that suit may not have been suitably defended, or, in the end, may not have been defended at all. However this may be, the appellants were neither parties nor privies to it.

2. This exception is strengthened by the fact referred to in the

opinion of the Chief Justice (fol. 222), that the appellants objected to the employment of Birely, Hillman & Streaker, and before the work began told the libellants that if Pusey, Jones & Company made the repairs, and they were liable, they would not dispute their bills.

The appellants claimed that Pusey, Jones & Company offered for $4,300 to do what Birely, Hillman & Streaker charged, and were allowed, $6,381.01 for (fol. 135).

And M. Gibbons, of Pusey, Jones & Co., testified (fol 104) that $4,300 was the fair and reasonable value.

Last Point --If the Court shall hold that the declarations of Gove were competent, the decree must be opened for that reason, and there must be a new reference to a Commissioner. If the Court shall hold that the schooner was in fault, there must be a decree accordingly.

JNO. E. PARSONS,
for Appellants.

OCT 19 1882

EVENING POST JOB PRINTING OFFICE, 208 Pearl, N. Y.

16-13

Supreme Court of the United States.

JOHN H. CLARK ET AL., CLAIMANTS OF THE STEAMER "NEW ORLEANS," &C.,
Appellants,

vs.

JOHN S. WEEKS, JAMES W. FITCH ET AL.,
Appellees.

Brief and Points for Appellees.

This is an appeal from a decree of the Circuit Court for the Southern District of New York affirming a decree of the District Court of that District in favor of the appellees (these libellants) against the appellants (these claimants).

The action arose from a collision between the steamship *New Orleans*, belonging to the appellants, and the schooner *Allie Bickmore*, belonging to the appellees, by which the schooner and her cargo were very seriously damaged.

The collision occurred about five o'clock on the morning of the 6th September, 1874, in the Atlantic Ocean, about forty miles southeasterly from Cape Henlopen.

It was broad daylight at the time of the collision, so that a vessel could be seen at least two miles away. The wind

was very light—so light that, with all sails set, the schooner made but a mile and a half to two miles an hour. The steamer was making eleven miles or a little more an hour, and shortly before collision, her mate, who was in charge, called away the lookout to help wash down the decks, so that from the time he was called away there was no watch or lookout, and the only one to perform the duty of lookout was the wheelman, and he never saw the schooner until his attention was called to her by the mate, and the latter never saw her until his attention was called to her by shouts and cries of alarm from those on board her, and at this juncture the two vessels were so near that collision was unavoidable.

The schooner's lights were set and burning brightly, and she was in all respects well equipped and manned.

The cause having been tried in the District Court and decided adversely to the claimants, the usual order of reference to a commissioner to ascertain damages was made, and full proofs and hearing were offered and had before such commissioner, and upon the coming in of his report, very careful hearing thereon by the District Judge, exceptions having been taken by both parties. From the decree entered at this stage, appeal was taken and the action retried and argued at the Circuit Court.

The facts found by the Chief Justice, who held the Circuit, and his conclusions of law and opinion, are at fols. 215 to 226 of Record.

The opinion of the District Judge is at folios 46 to 53 of the Record.

At folios 227 to 232 are exceptions of the appellants.

First Point.

The findings of fact by the Circuit Court amply sustain the conclusions of law of that court.

The findings of fact being conclusive and no examination of the evidence permitted by this court, there is but one course open to the appellants in justification of their appeal.

They must show error in the conclusions of law, that the facts fail to support the conclusions, and hence the court below so far erred that its judgment cannot be sustained.

The conclusions of law to be examined are but two, and of these the first is so elementary, when the facts are examined, as to forbid an extended argument.

Here was a steamship 245 feet long, of 1448 tons burthen, speeding at the rate of eleven miles and more an hour, a thousand feet in a minute, with no lookout, and never making or becoming aware of the presence of a schooner, toward which she was rapidly moving, until cries of alarm from the schooner reached the ears of her mate and crew. It was in the morning, too, when the schooner was visible two miles away, and the weather so calm she could make but a mile and a half or possibly two miles to the hour with all sails set. Clearly a steamer thus manned and acting is liable for the results of a collision with a vessel found to have been without fault, and no authorities are necessary to sustain a proposition so purely elementary.

Second Point.

It may be contended that the wheelsman was a competent lookout and answered the requirements of the rule, but this contention is not maintainable, for the law condemns the resort to a wheelsman for lookout purposes.

Chamberlain *vs.* Ward, 21 How., 548.
The *Ottawa*, 3 Wall., 268.
The *Hypodame*, 6 Wall., 224.

Beside, the answer fails to allege (as is usual where lookouts exist, and often where they do not) that the steamer had any lookout, thus confessing by the omission of this customary allegation that she had none.

Again, the wheelsman failed to discover the schooner until the steamer's mate, aroused by the cries of alarm from the schooner, had seen her and ascended from the deck to

the wheelhouse and ordered the wheel a-port. This order was the first intimation to the wheelsman that the schooner was in sight, and collision was unavoidable when this came.

Third Point.

The second conclusion of law rests upon the correctness of the proceedings before the commissioner. The very excellent rule, that evidence must be discussed in the courts below, and appeals to this court come up upon questions of law only, embraces, it is submitted, trials upon interlocutory orders before commissioners, for the purpose of ascertaining damages as well as trials upon the merits.

A careful examination of all the proceedings before the commissioner in this case reveals but one ruling, upon the admissibility of evidence or proofs, that was adverse to the appellants or claimants there, and that is found at fol. 111 of the Record, and came up in the following way;

The schooner was repaired at Philadelphia, and the charge of the ship builders for repairs was contested in part by her owners. The ship builders libelled for the materials and labor, and in the litigation, Abiel Gove, one of the owners, was examined as a witness, as to the value of the materials, &c. This occurred prior to the hearing before the commissioner herein, and the claimant's counsel proposed to read the testimony Gove had given in the Philadelphia suit in evidence before the commissioner in this. Upon objection by the libellant's counsel to this method of ascertaining damages, the commissioner excluded the testimony. This ruling may be presented and urged here, as it was below, as error.

There are two sufficient answers to the appellant's claim in this respect.

The Philadelphia suit was decided adversely to the libellants, so that Gove's testimoney was overborne. This was conceded upon the trial at circuit.

Gove's statements were only conclusive upon himself; they were not evidence against the other owners, for the owners of this schooner were not *partners*, but *part owners*. They were tenants in common, and the statements of one were not binding upon the others.

Jeggers *vs.* Bennings, 1 Starkie, 64; 3d Kent, 154.
Story on Partnership, § 453.
Parsons on Shipping, 116.
The *William Bagley*, 5 Wall., at p. 405.

There is no evidence in the case to establish a copartnership between the owners, so they are seised as part owners only.

Fourth Point.

The foregoing points cover all legitimate questions of law in the case. An effort to secure an examination of the testimony anew, in order to readjust the findings of fact, is manifested in the somewhat novel form of exceptions at fols. 227 to 232.

Inasmuch as the rule is settled upon this subject, there can be no argument. If argument were permitted, the overwhelming weight of evidence in favor of every finding of the Circuit Court would instantly become apparent.

As upon the assessment of damages, but one serious exception was made, and that amply disposed of, it is respectfully submitted that no other point is necessary to the full understanding and proper disposal of the appeal.

The decree below should be affirmed, with costs.

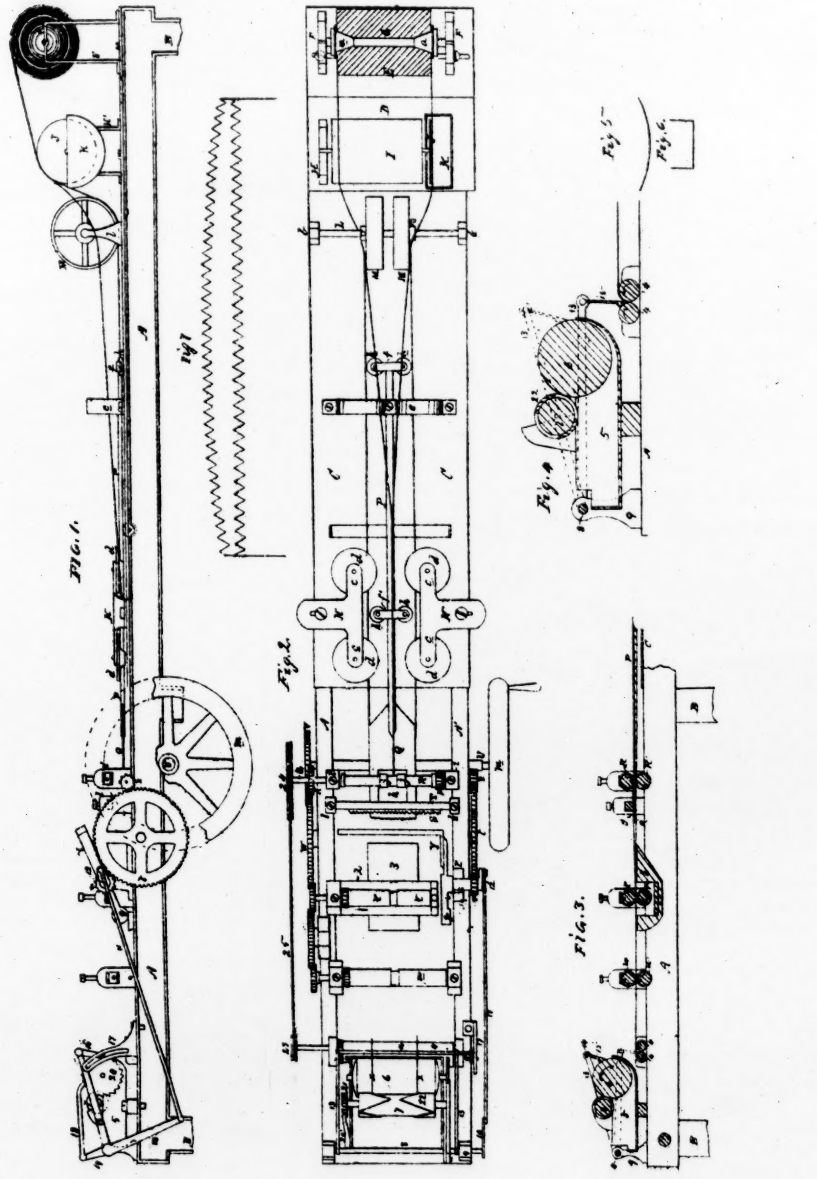
HENRY J. SCUDDER,
Of Counsel for Appellees.

Nos. 3411 + 4430
Union Paper Bag Machine Co.
v.
Nixon et al
No. 38,457

page 1491 –

S E Pettee Paper Bag Machines

Patented May 5 1863



Witnesses
Chas E Foster
Charles Bowen

Henry Bowen
Atty for the assignee of
S. E. Pettee

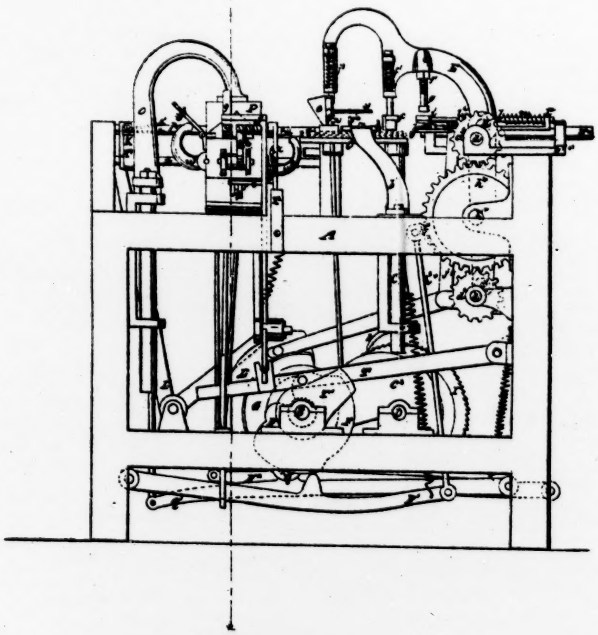
Nos. 341 & 430-
Union Paper Bag Machine Co.
v.
Nixon et al
Page 516

Sheet 1 4 Sheets

E.W. Goodale's Machine for Envelopes, Bags &c.

NO. 13,647 PATENTED OCT. 9. 1855

Fig 1



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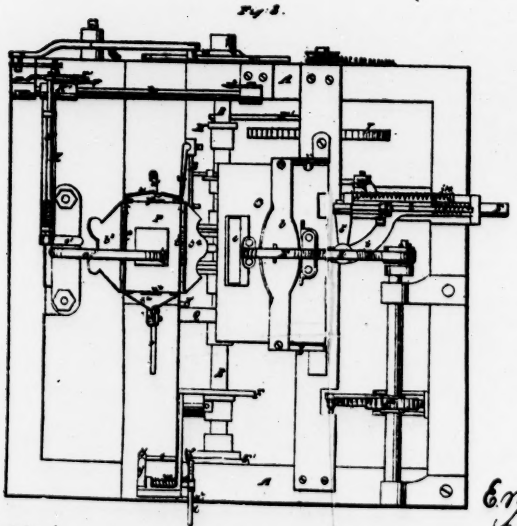

Witnesses
J.W. Combs
R.S. Spencer

Inventor
E.W. Goodale
per Munn & Co
Attorneys

1430-
Eagle Bag Machine Co
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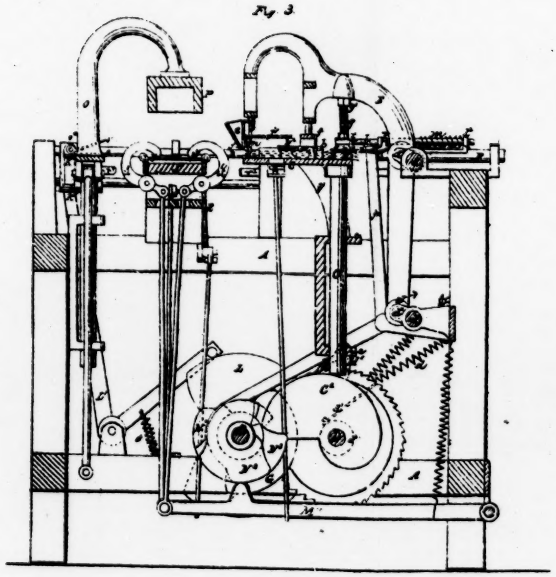
Sheet 2 ..4 Sheets

E. W. Goodale's Machine for Envelope Bags &c.

NO. 13,647 PATENTED OCT. 9, 1855

Fig 3



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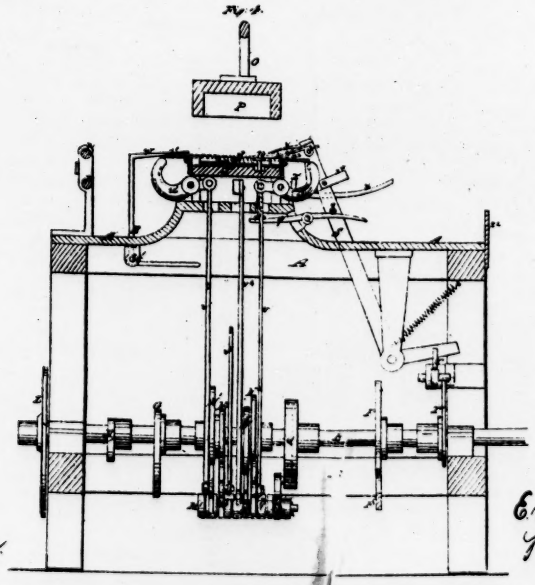

Witnesses
J. W. Coombs
R. S. Spencer

Inventor
E. W. Goodale
per Munn & Co
Attorneys

Nos. 341 & 430.
Union Paper Bag Machine Co.
v.
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pages 518

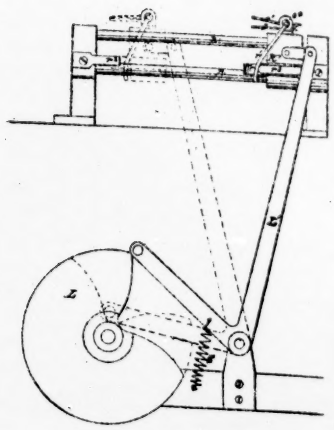
E. W. Goodale's Machine for Envelopes, Bags &c.

Sheet 3. 4 Sheets

NO. 13,647

PATENTED OCT. 9. 1855

Fig. 5.



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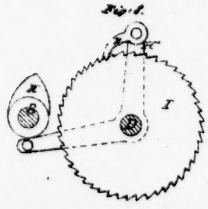

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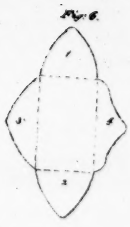

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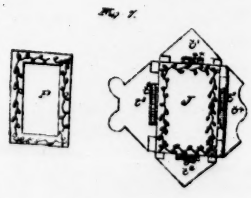

Witnesses
J. W. Coombs
R. S. Spencer

Inventor
E. W. Goodale
per Munn & Co
Attorneys

Nos. 341 & 430-
Union Paper Bag Machine Co.
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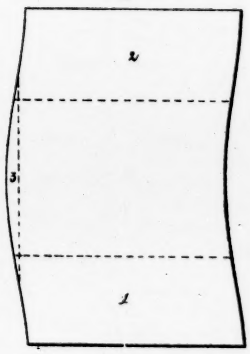
E. W. Goodale
Paper Bag Mach.
Additional Drawing.

Filed Oct 5. 1860.
Reissued Apl 10. 1861.

No 65.
4170

Fig 9.



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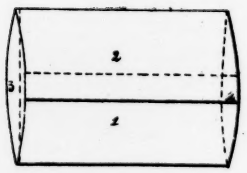

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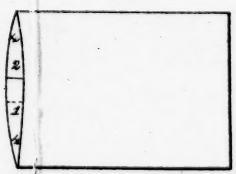

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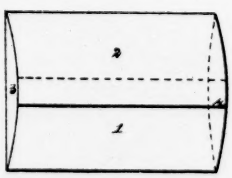

Witnesses:

J. W. Combs
R. S. Spencer

Inventor:

E. W. Goodale
per Munn & Co
Attorneys

Nos 341 + 430.
Union Paper Bag Machine Co.
v.
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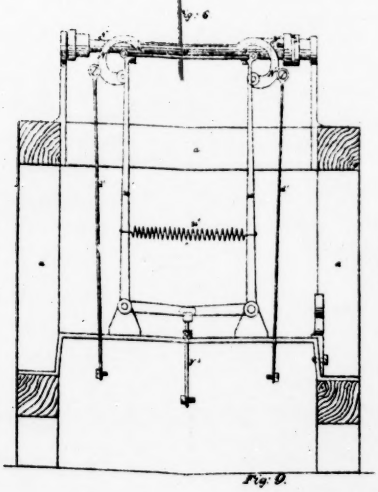
page 529

E. W. Goodale's Paper Bag Machine.

Sheet 2, 3 Sheets.

Patented May 26th, 1885.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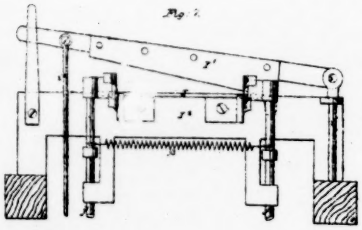
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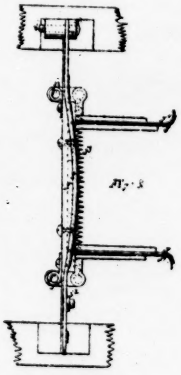
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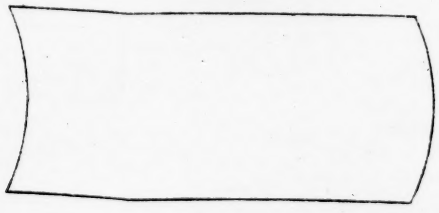
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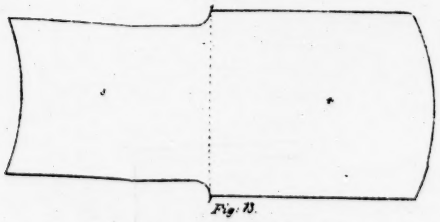
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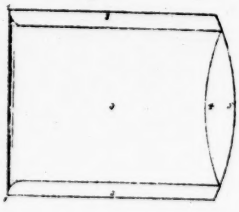
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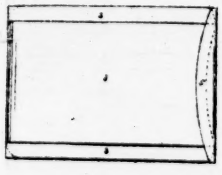
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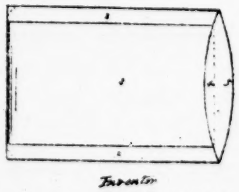

Witnesses.
Jno Crosby
A. S. Spencer

Inventor
E. W. Goodale
by Munn & Co
Attorneys

Nos. 341 & 430.
Union Paper Bag Machine Co.
v. page 528
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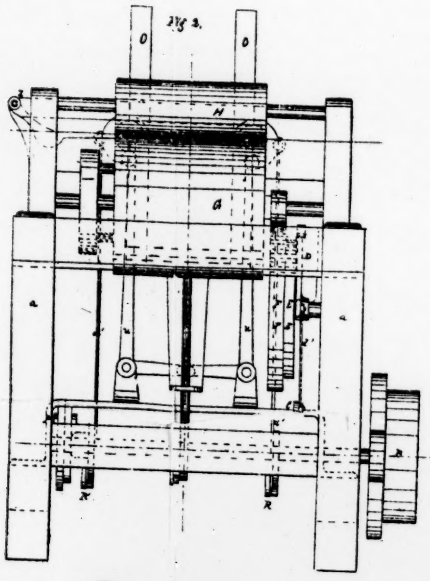
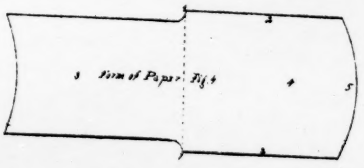
E. W. Goodale's Paper Bag Machine.

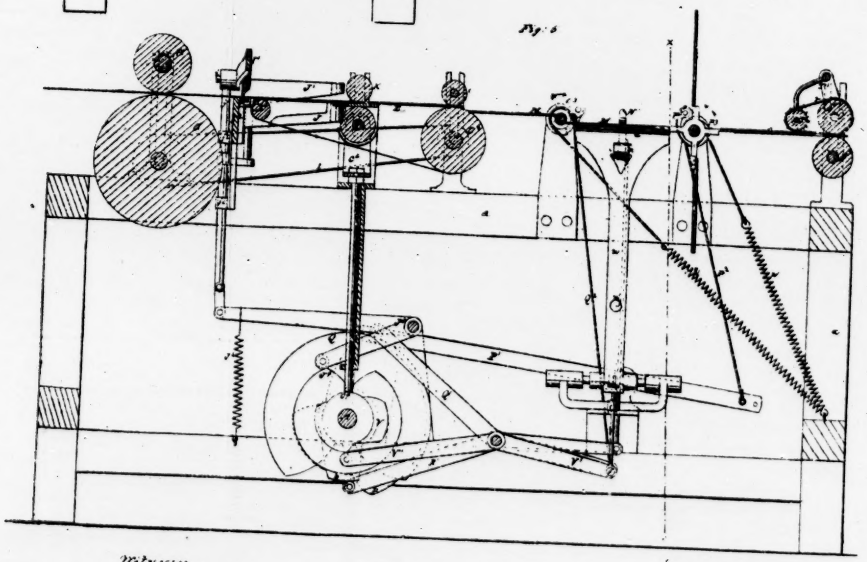
Sheet 2. 3. Sheets

No 12,545.

Patented May 29th 1855.







Witnesses.
Geo. Connelly
A. L. Spencer

Inventor
E. W. Goodale
Per Munn & Co
Attorneys

Nos. 341 & 430-
Union Paper Bag Machine Co.
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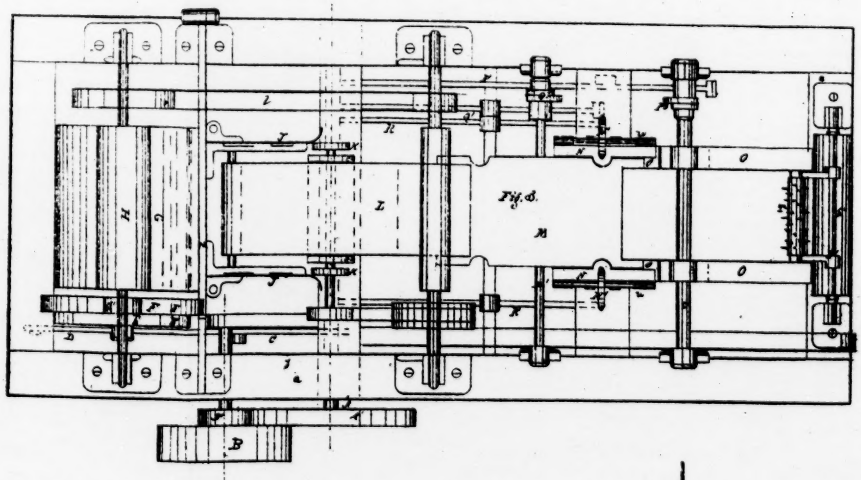
Sheet 1, 3 Sheets

No 12,743

Patented May 29th, 1855-



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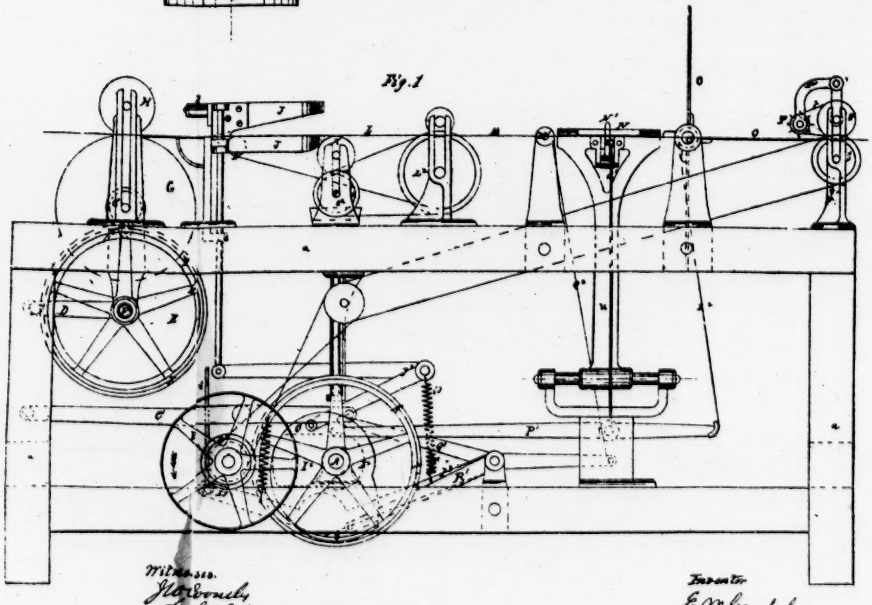


Witnesses.
H. McDonald
R. S. Spencer

Inventor.
E. W. Goodale
Per Munn & Co
Attorneys

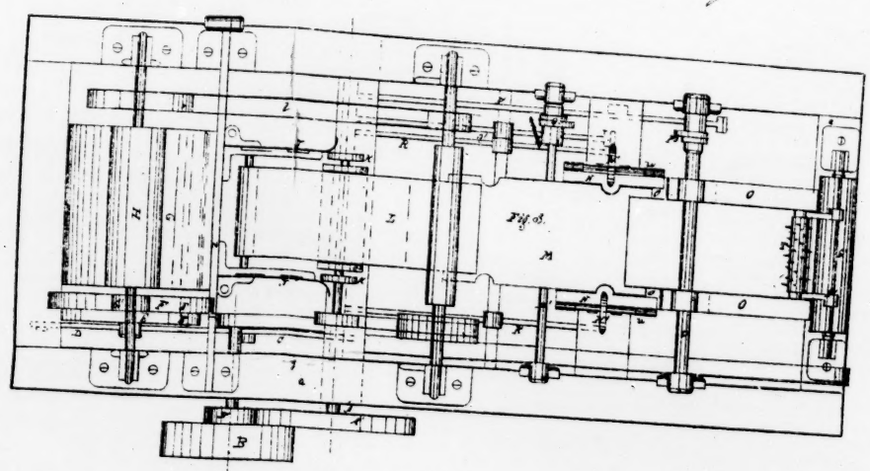
Nos. 344 + 430-
Union Paper Bag Machine Co.
v.
Nixon et al
page 6 of 6

E. W. Goodale's Paper Bag Machine

Sheet 1, 3 Sheets

No 12,945

Patented May 29th 1855-



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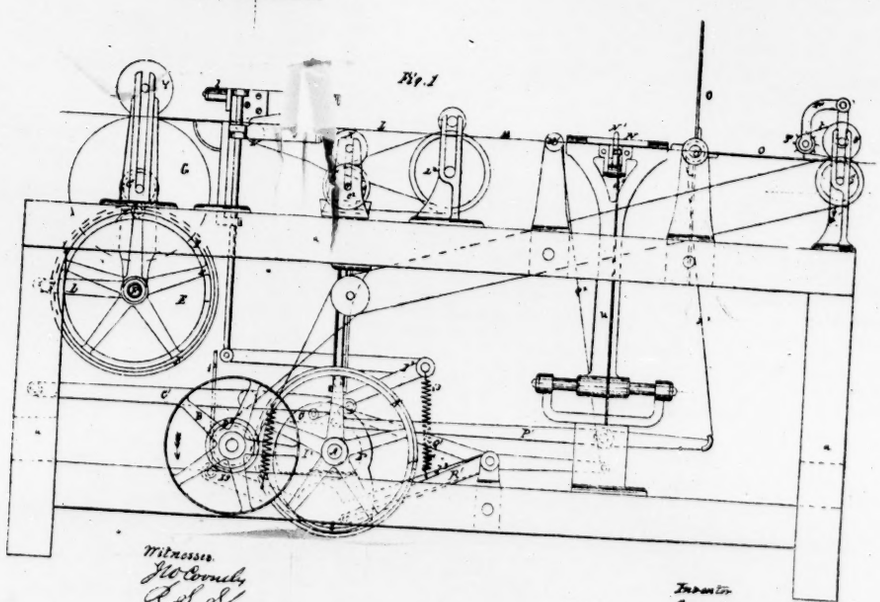

Fig 1

Witnesses
J. W. Connelly
A. S. Spencer

Inventor
E. W. Goodale
Per Munn & Co
Attorneys

Nos. 341 + 430.
Union Paper Bag Machine Co.
v.
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Bag & 645

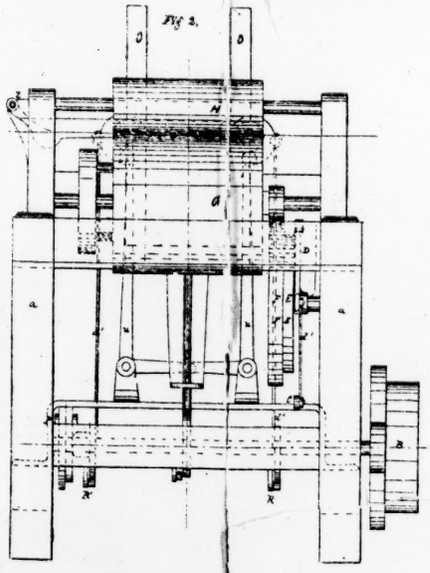
E. W. Goodale's Paper Bag Machine.

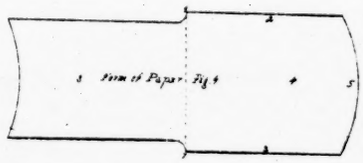
Sheet-2-3 Sheets

No 12,544

Patented May 30th 1854.

Fig 2.





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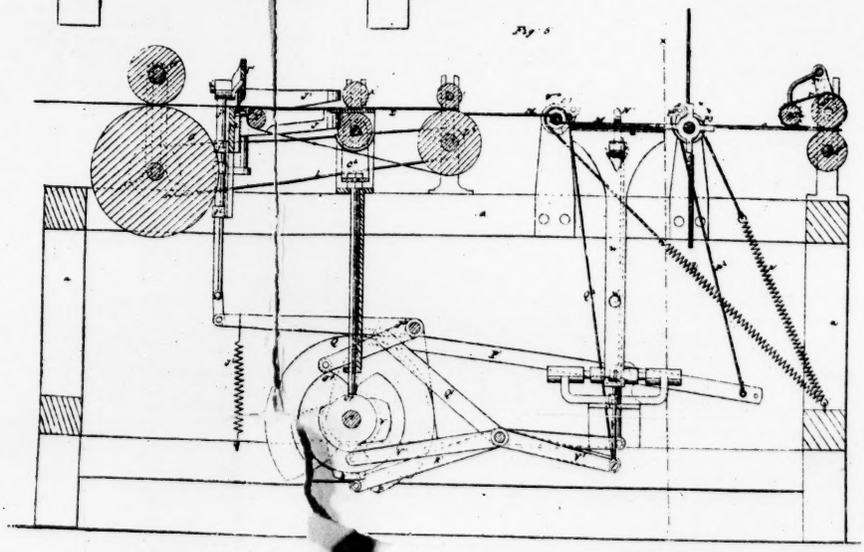


Witnesses.
H. C. Connelly
R. S. Newman

Inventor
E. W. Goodale
Per Munn & Co
Attorneys

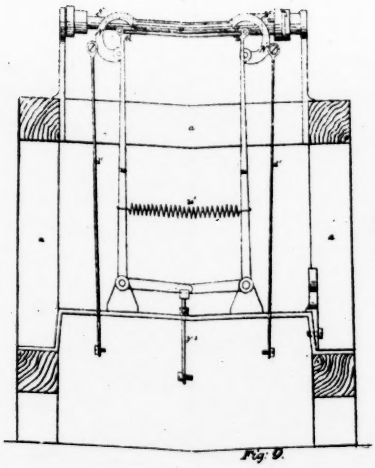
Nos. 341 + 430.
Munn Paper Bag Machine Co.
v.
Nixon et al
page 6476.

E. W. Goodale's Paper Bag Machine.

Sheet 2, 3 Sheets

Patented May 20th, 1853

Fig: 6



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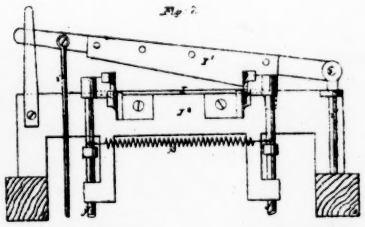


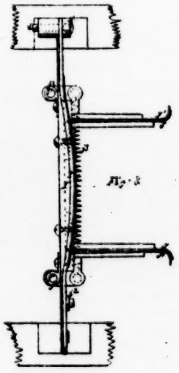
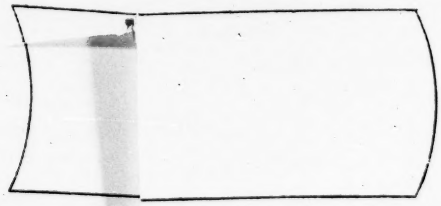


Fig: 8

Fig: 9



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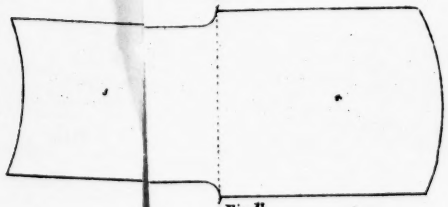

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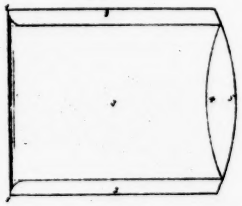


Fig: 12

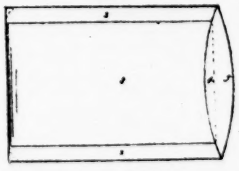
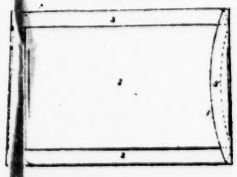


Fig: 13



Witnesses.
Jno Boone Jr
A. S. Spencer

Inventor
E. W. Goodale
Per Munn & Co
Attorneys

Nos. 3441 + 4430 -
Union Paper Bag Machine Co.
v. Page 624.
Nixon et al

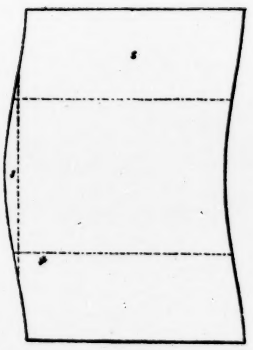
NO 13.647

PATENTED OCT. 9. 1855

Sheet 4.4 Sheets.

E. W. Goodale's Impt in Machinery for Making Envelopes & Bags.

Fig: 9.



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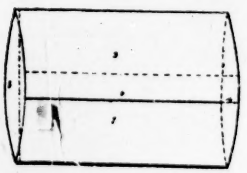


Fig: 12.

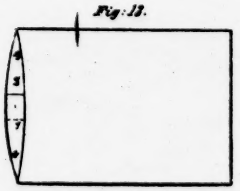


Fig: 11.

Witnesses
J. W. Coombs
R. S. Spencer

Inventor
E. W. Goodale
per Munn & Co
Attorneys

Nos. 3418 & 430 -
Union Paper Bag Machine Co.
v.
Nixon et al

page 623

Sheet 3. 4 Sheets

E W Goodale's Machine for Envelopes, Bags &c.

NO. 13,647

PATENTED OCT. 9. 1855

Fig. 5

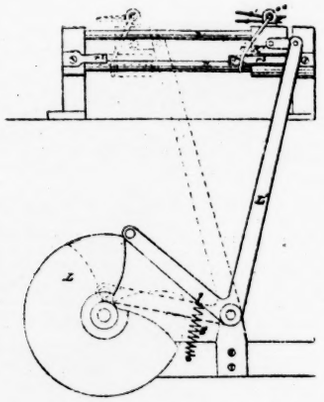


Fig. 6

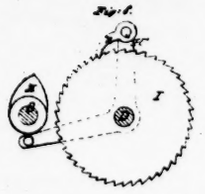
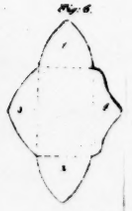
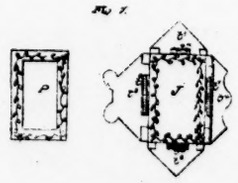


Fig. 7





Witnesses
J. W. Combs
R. S. Spencer

Inventor
E. W. Goodale
per Munn & Co
Attorneys

Nos. 341 + 430.
Union Paper-Bag Machine Co.
vs.
Nixon et al. page 622

Sheet 2. 4 Sheets

E.W. Goodale's Machine for Envelopes Bags &c.

NO. 13,647 PATENTED OCT. 9. 1855

Fig. 3

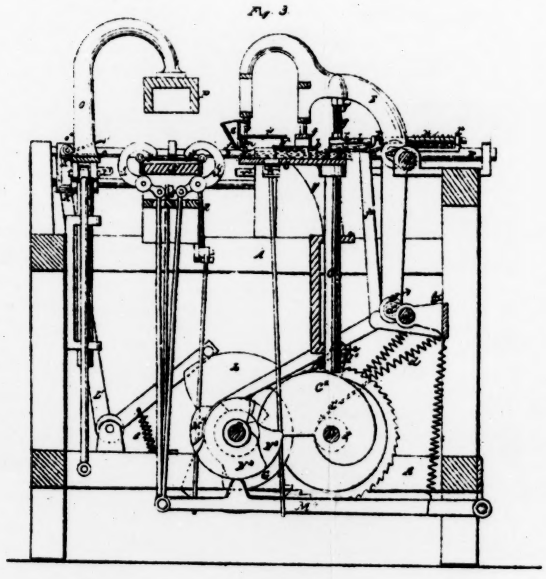
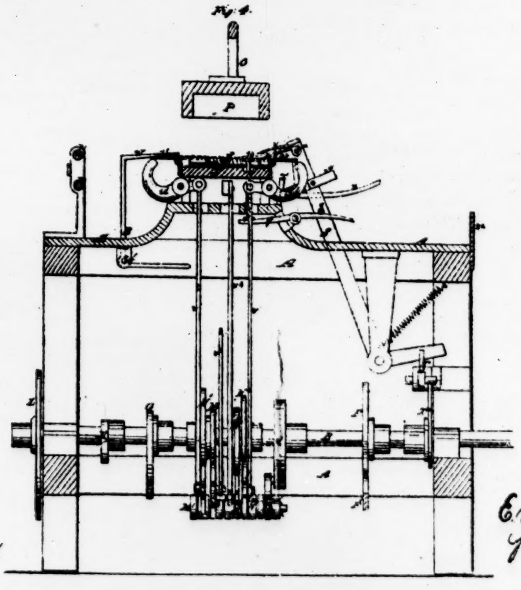


Fig. 4.



Witnesses
J.W. Coombs
R.S. Spencer

Inventor
E.W. Goodale
per Munn & Co
Attorneys

Nos. 341 & 430-
Union Paper Bag Machine Co.
v.
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Sheet 1 4 Sheets

E.W. Goodale's Machine for Envelopes, Bags &c.

NO. 13,647 PATENTED OCT. 9. 1855

Fig 1

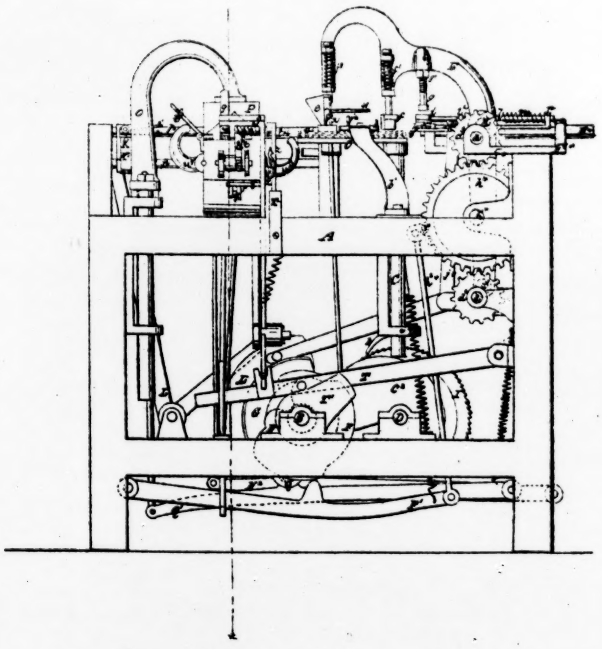
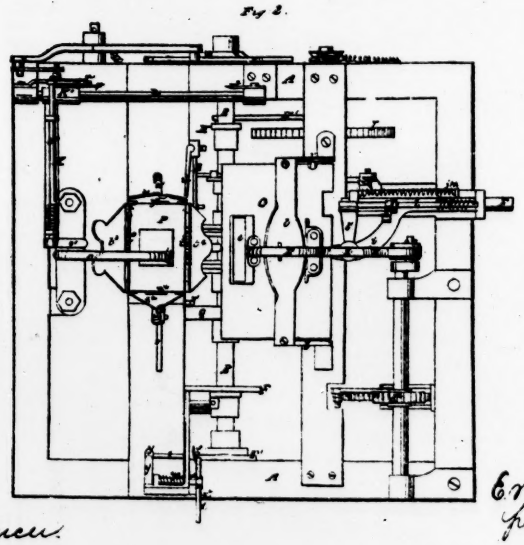


Fig 2.



Witnesses
J.W. Combs
R.S. Spencer

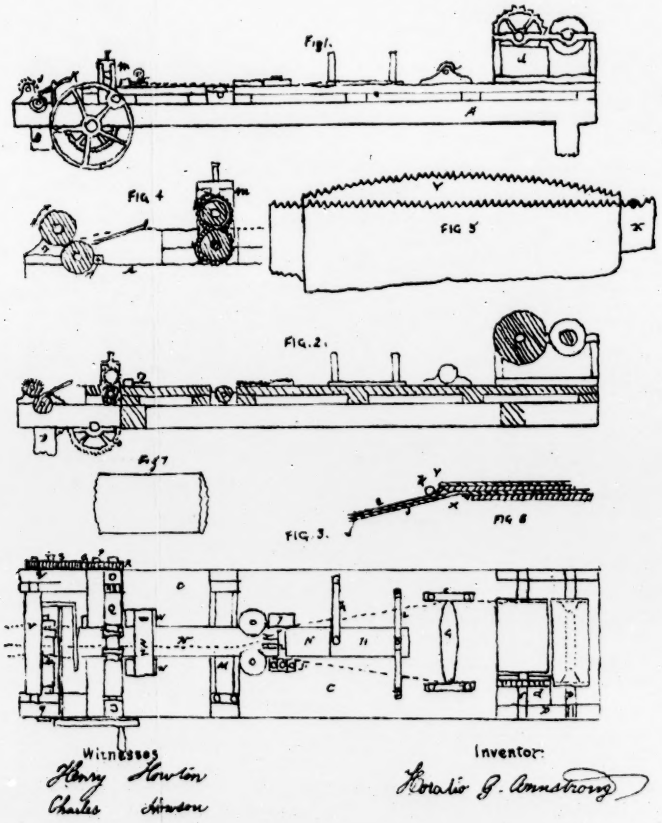
Inventor
E.W. Goodale
per Munn & Co
Attorneys

Nos. 341 + 430-
Union Paper Bag Machine Co.
vs.
Nixon et al
Suit 578 Eq

H G Armstrong

Paper Bag Machine

No. 30191 Patented Oct 2, 1860



Witnesses:
Henry Howlin
Charles Nixon

Inventor:
Horatio G. Armstrong

578-3

Nos. 341 + 430.
Union Paper Bag Machine Co.
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Page 654

Scale of FIG. I & II 3 Inch = a Foot.
" FIG. III & IV 3 Inches = a Foot.
" FIG. V VI & VII 2 Inches = a Foot.

A.D. 1855. AUG. 25. N° 1956.
BROWN'S SPECIFICATION.

A.D. 1855. AUG 25. N° 1926.
BROWN'S SPECIFICATION

FIG XIII.

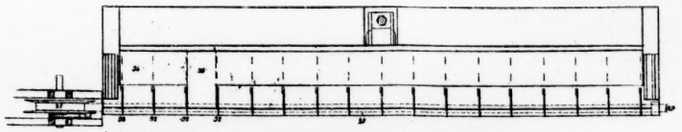

FIG. XIV.

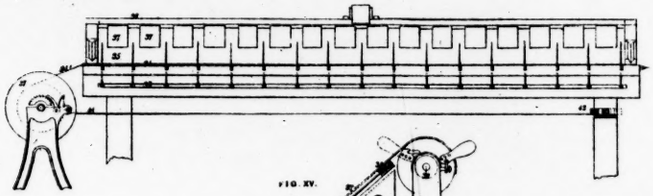

FIG. XV.

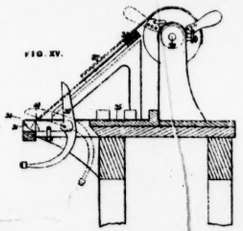

FIG VIII.

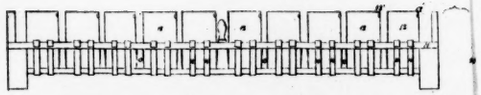

FIG. X.

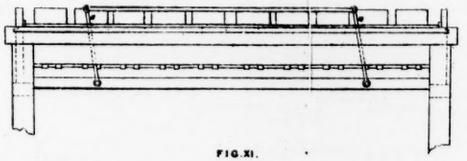

FIG. XI.

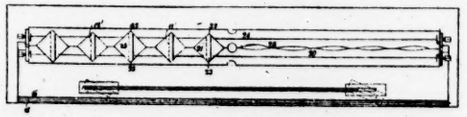

FIG. XII.A

FIG. XII.

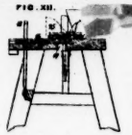

FIG. IX.

Scale of Figs VIII. X. XI. XII. XIII. & XIV. *Inch - a Foot.* *Figs* IX & XV 2 *Inches - a Foot.*

The Allied drawing is not colored

Drawn on Stone by Malby & Sons

No. 341 + 430.
Union Paper Bag Machine Co.
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Nos. 341 + 480-
Union Paper Bag Machine Co.
vs. Page, 67 +=
Nixon et al

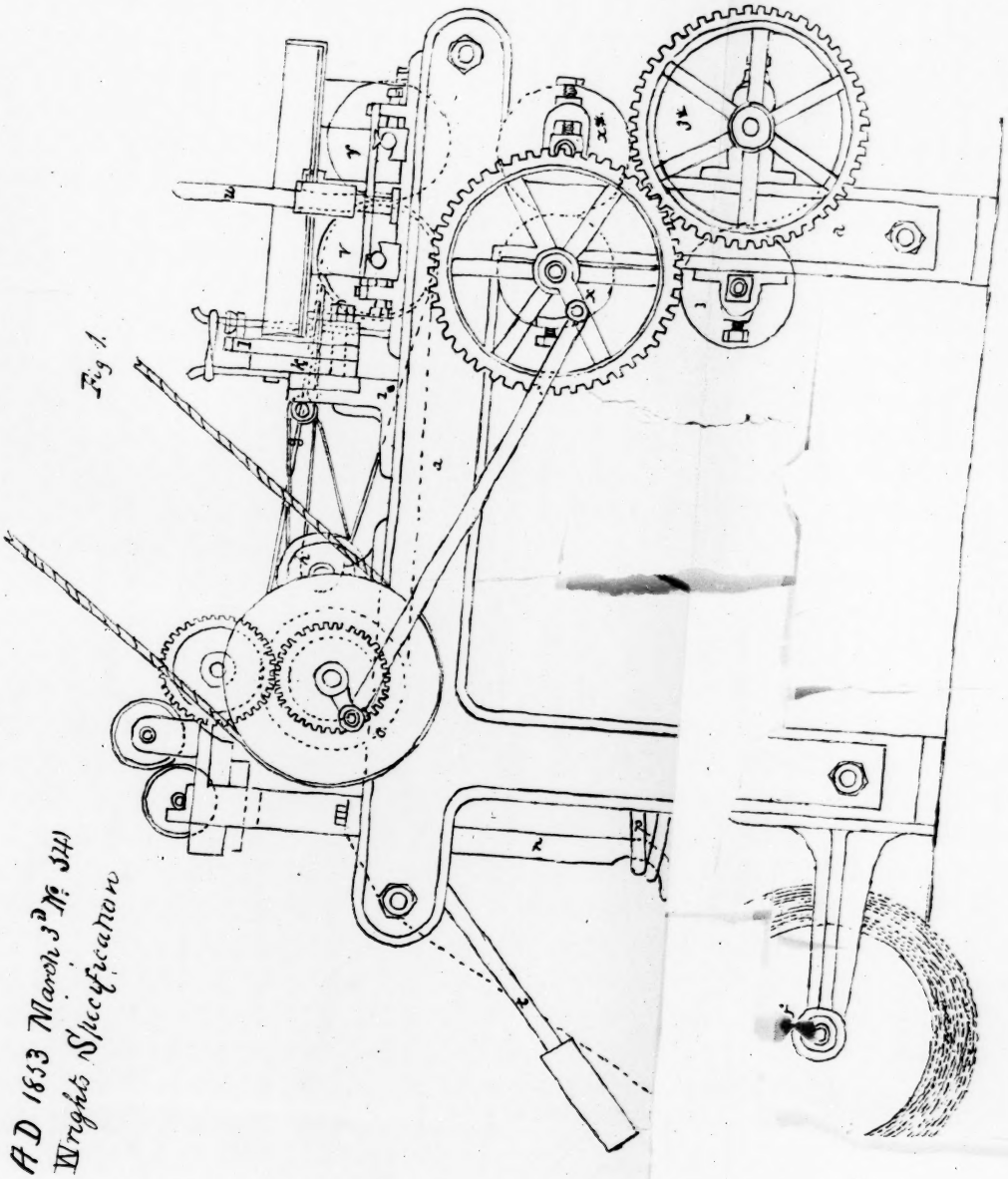
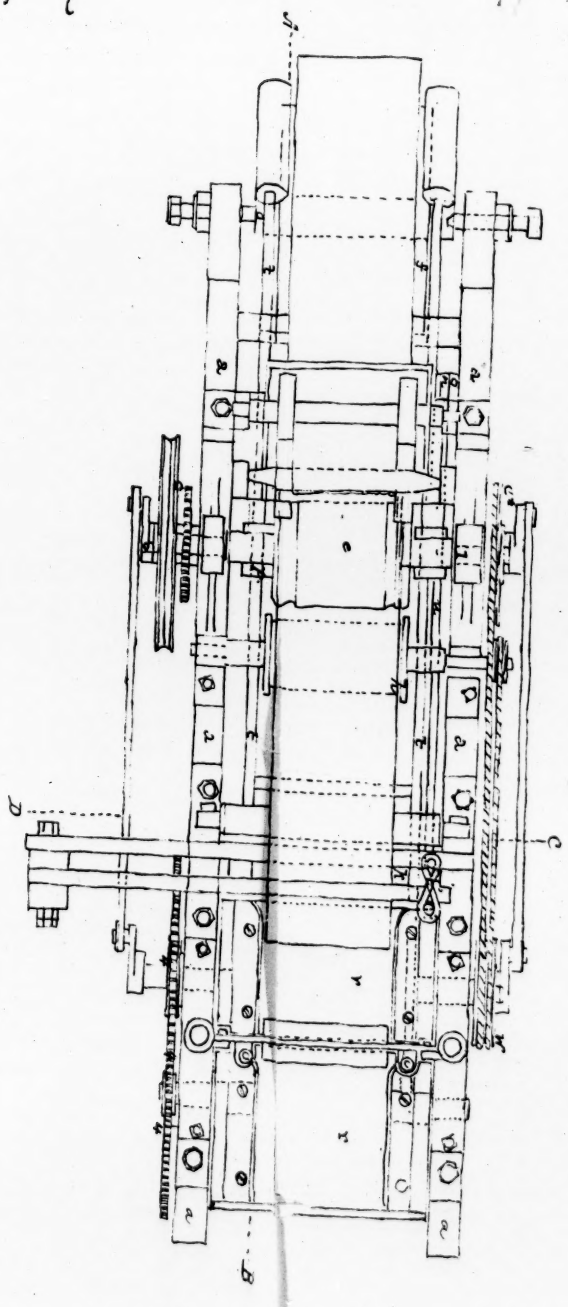


Fig 1.

AD 1853 March 3rd No 341
Wrights Specification

Nos. 341 + 430.
Union Paper Bag Machine Co.
v.
Nixon et al
page 675



Nos. 341 & 430.
Union Paper Bag Machine Co.
v. page 67 &c
Nixon et al

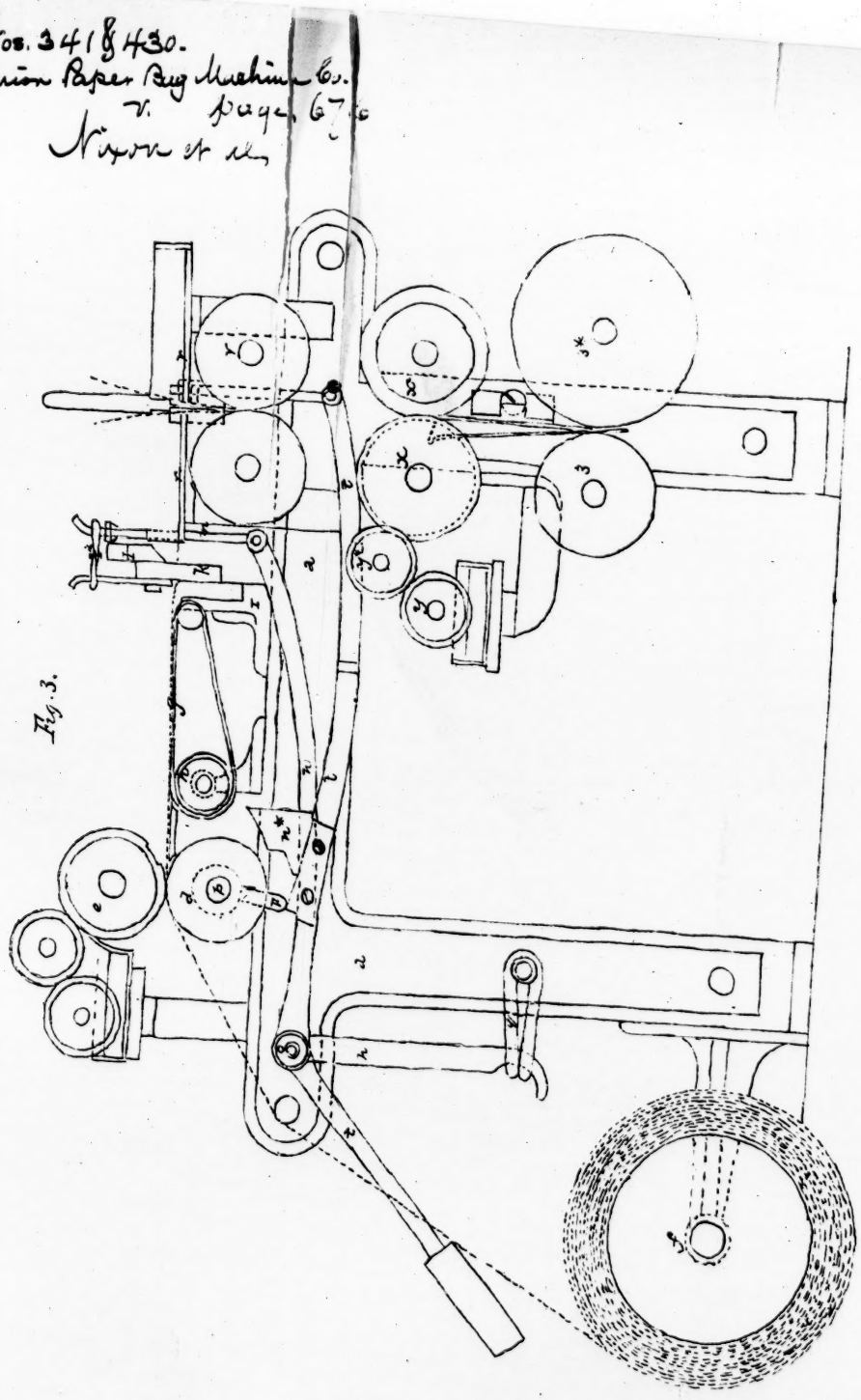


Fig. 3.

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Fig. 7

Fig. 6

Fig. 8

Fig. 4

Nos. 341 + 430.
Union Paper Bag Machine Co.
v.
Hunn et al
Page 719

C. H. Morgan.

Paper Bag Mach.

No 37,726. Patented Feb 17, 1863.

Fig 1.

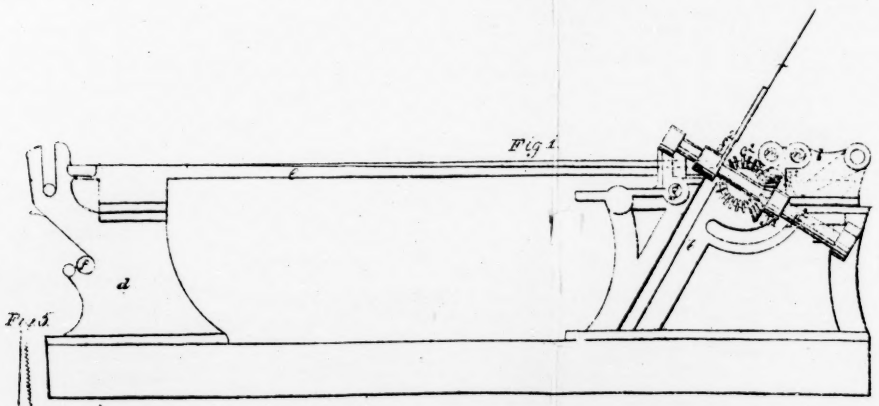


Fig 4

Fig 2.

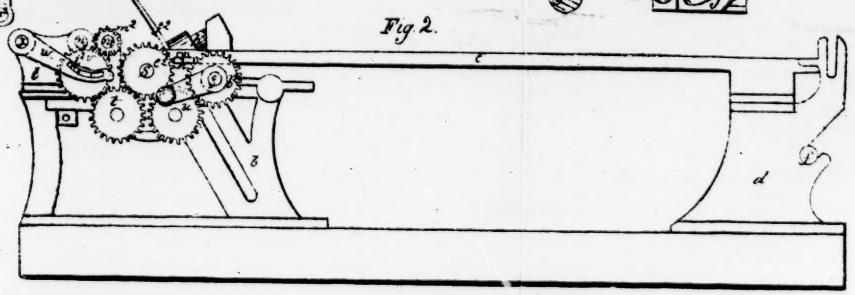
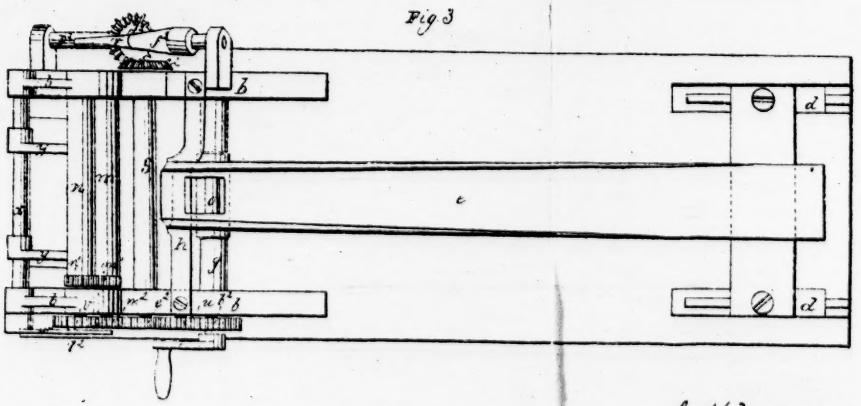


Fig 3



Witnesses
J. W. Crosby
Washington

C. H. Morgan
per Munn & Co
Attorneys

Nos. 341 + 430 -
Union Paper Bag Machine Co.
v. - Page 7 of
Nixon et al

B. F. Rice

Fig. 2

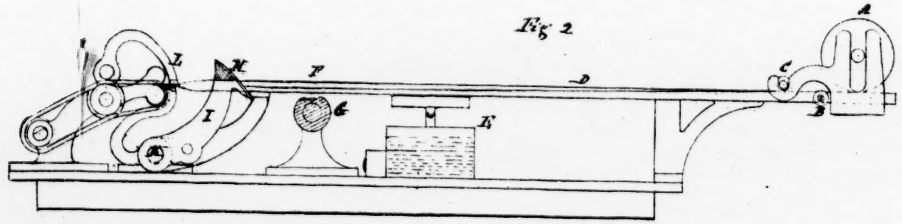


Fig. 6

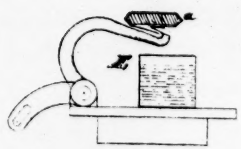
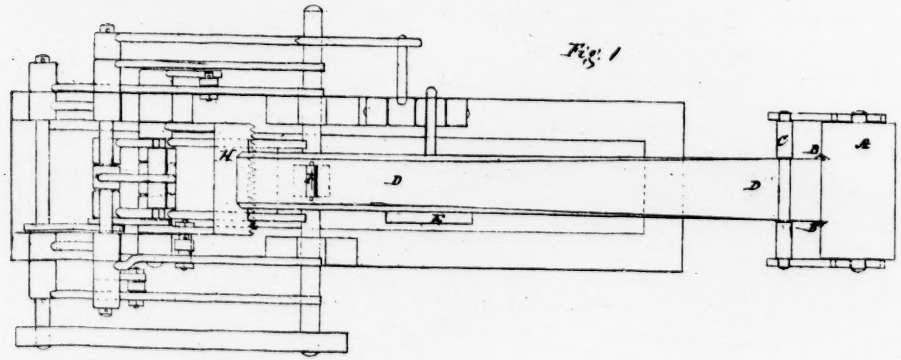


Fig. 5

Fig. 4

Fig. 1



64½

E. W. Goodale.

Paper Bag Mach.

2 Sheets Sheet 1

Filed July 26. 1856.

Fig. 1

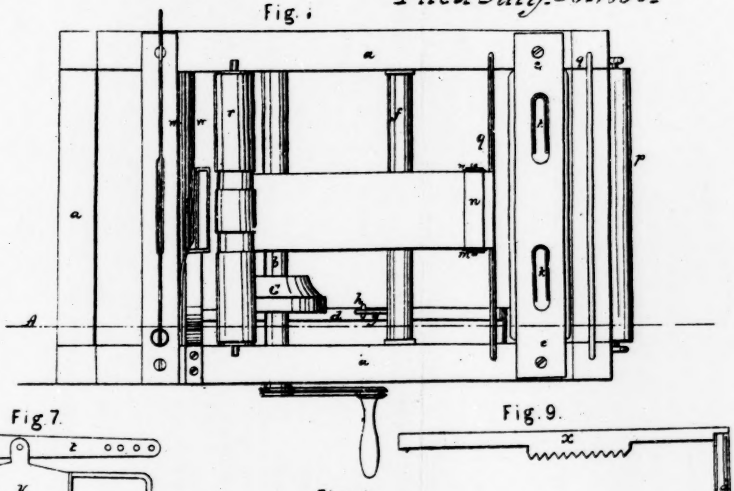


Fig. 7.

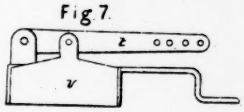


Fig. 9.

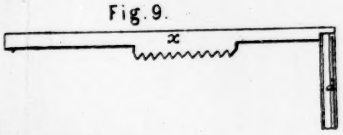


Fig. 4.

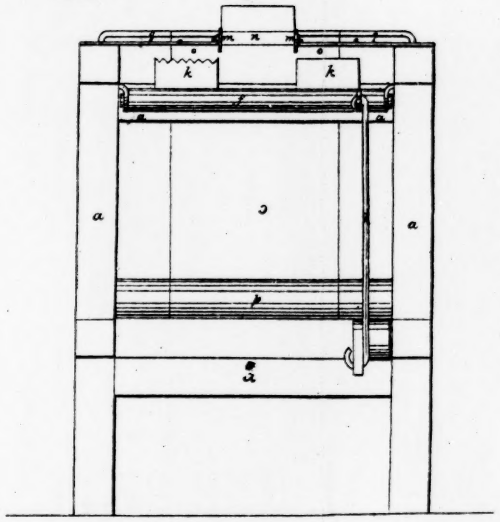


Fig. 8.

Fig. 6.

Nov. 3 41 + 430.
Union Paper Bag Machine Co.
v.
Dixon et al
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E. W. Goodale.

Paper Bag Mach.

Filed July 26. 1856.

2 Sheets. Sheet 2

Fig. 2.

Fig. 3.

No. 34,043.

Union Paper-Bag Machine Co.

vs.

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Nos. 3H1 + H30 -
Union Paper Bag Machine Co.
v.
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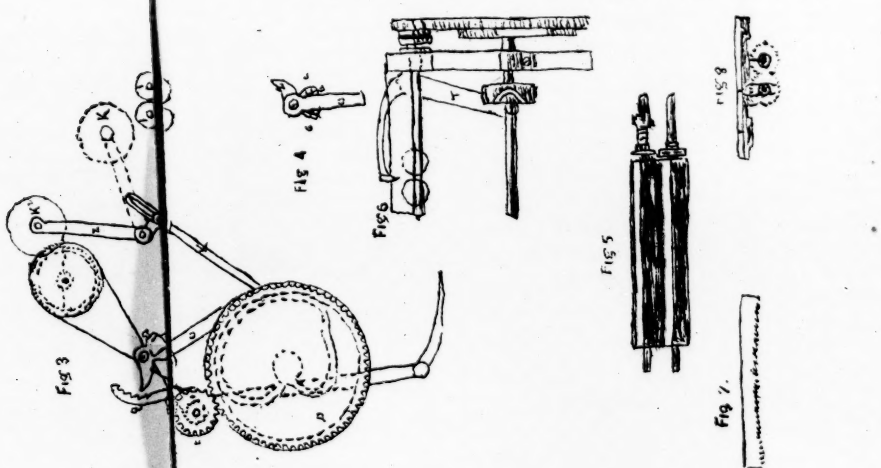
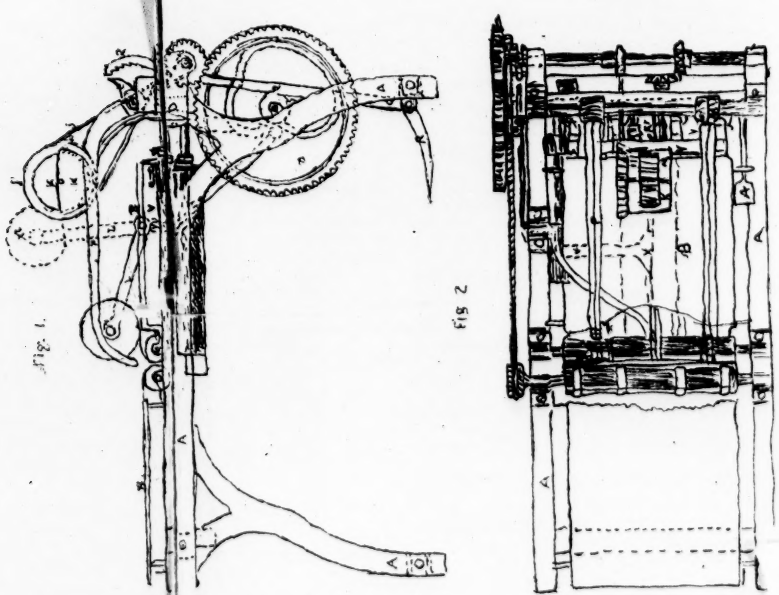
Page 697

Cyrus Chambers Jr

Paper Folding Machine.

Patented Mar 5 1861





Nos. 341 + 430
Union Paper Bag Machine Co.
v.
B. F. Rice.
Paper Bag Mach. Nixon et al
Patented Apl 28. 1857.
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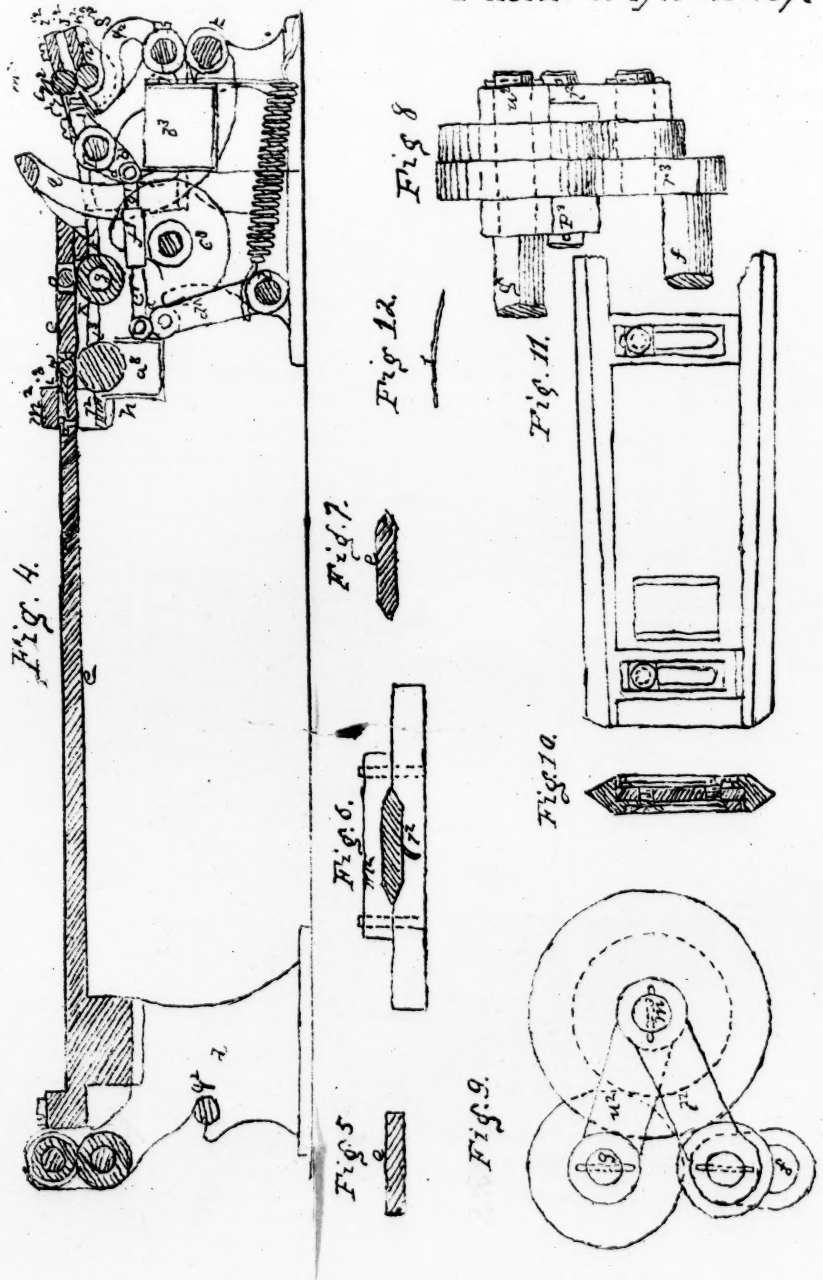

Nos. 341 + 430.
Union Paper Bag Machine Co.
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page 687

B. F. Rice.

Paper Bag Mach.

Patented Apl. 28. 1857.

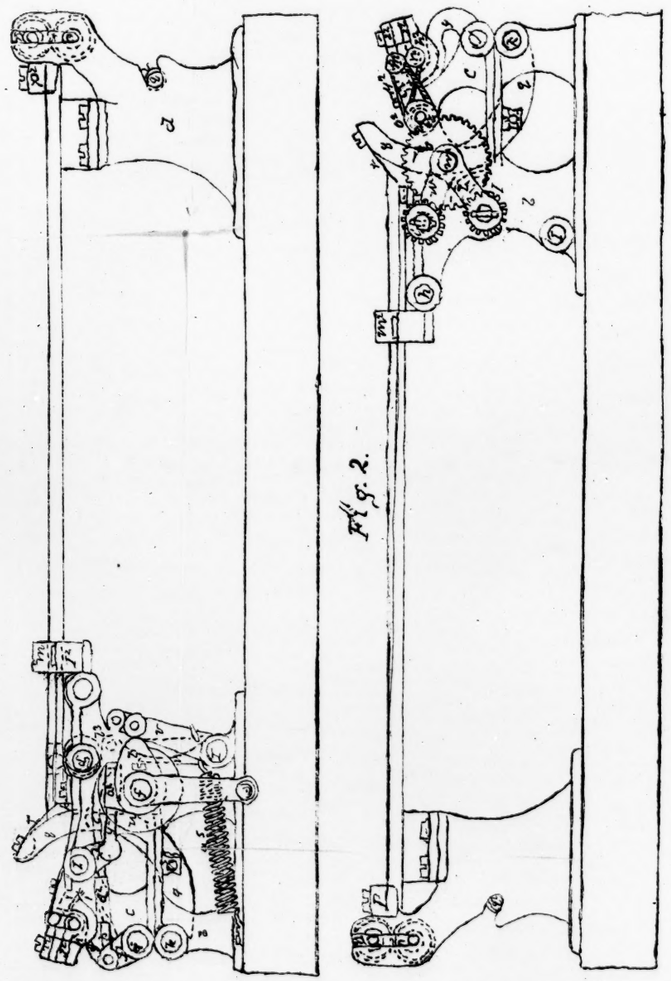


Fig. 2.

Nos. 341 + 430.
Union Paper Bag Machine Co.
v.
Nixon et al

page 688

B. F. Rice.

Paper Bag Mach.

No 17184

Patented Apl. 28. 1857.

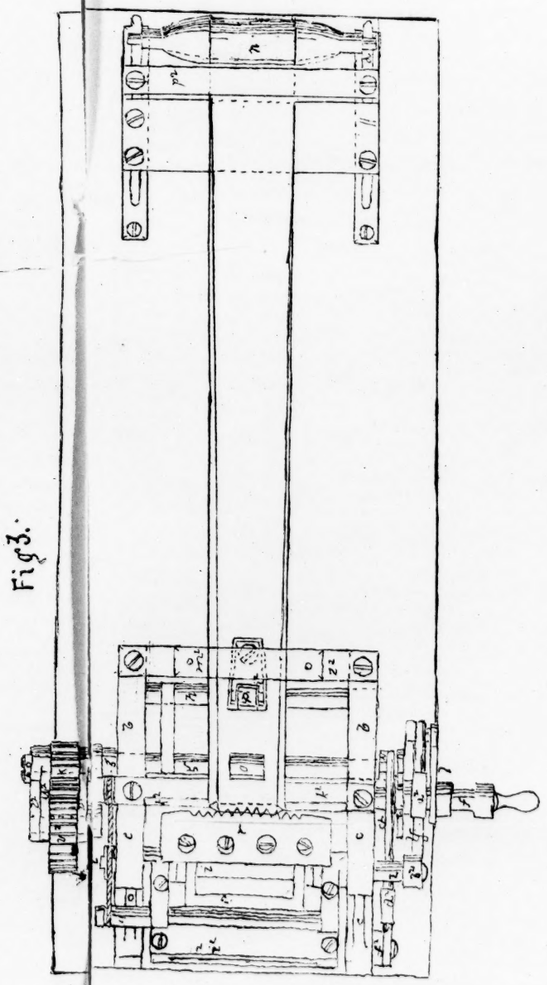
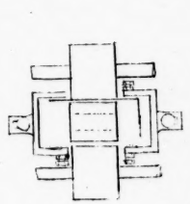


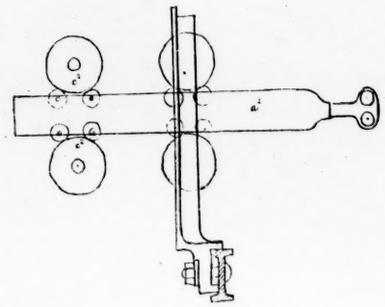
Fig 3.

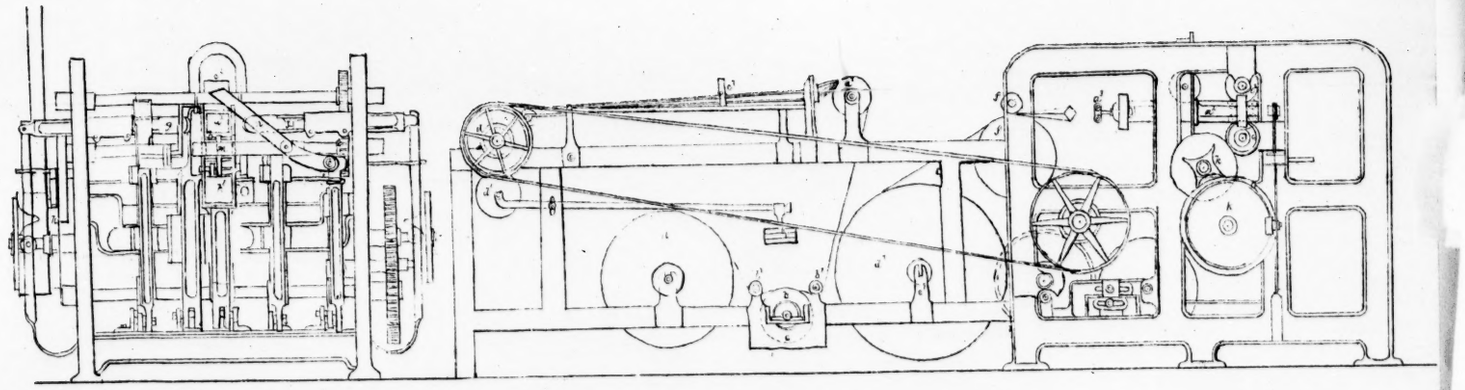
A. D. 1906. June 8. No. 13965.
T. & T. BIBBY'S Specification.

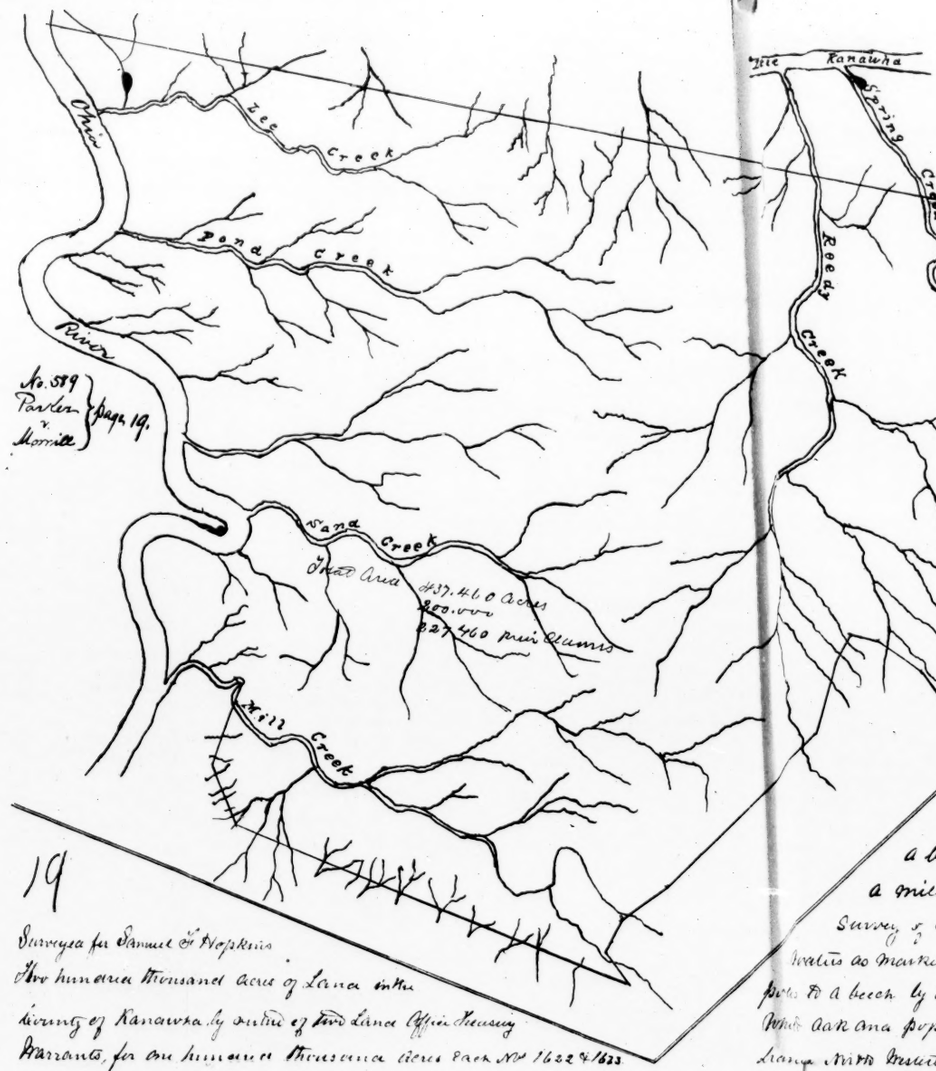
Nos. 341 & 430.
Union Paper Bag Machine Co.
v. Page 1618.
Nixon et al

FIG. 4









No. 589 Parker v. Morrill } page 19.

19

Surveys for Samuel & Hopkins
Two hundred thousand acres of Land in the
County of Kanawha by virtue of two Land Office Treasury
Warrants, for one hundred thousand acres each No 1622 & 1623
dated the 6th Oct 1795 and is bounded and described as follows Viz. Beginning at a
beech tree on the bank of a left hand fork of Poccotalico which runs thence
nearly S 30 W. the same being a corner to a Survey of 53.000 acres made for
Samuel Hollingsworth, thence running N 45 W 4490 poles to a Sugar
left & maple on the bank of a ridge running N E crossing
the head branches of Mill Creek and 18 Mile Creek as marked on the
plat thence N 45 W crossing Waters of Mill Creek 674 poles to a
poplar. 18 miles in dead marked S W H. thence running on
the Ranawha Spring Creek Reedy Creek

thence N 45 & 840 poles crossing several branches also crossing Mill
Creek to a black oak & sycamore in the mouth of a run on the East
of the creek about 80 poles above the rapides the black oak marked
S W H. thence N 16 W 109 poles crossing the creek
to a Spanish oak three feet in diameter on
the bank of the creek below the rapides marked on
two sides as a corner and also marked S W & notch in
Hatchet. the creek by the meanders thereof and binary
thence 1179 poles to the mouth of the creek on the opposite
thence up the River Ohio by the different meanders thereof and
binary thence crossing several creeks as marked on the plat
10126 poles to an elm four feet in diameter two sugar trees
and a beech on the bank of the Ohio River corner to the counties
of Kanawha and Harrison. thence with the dividing line between
said counties S 55 E crossing Waters of Lee Creek & Little Kanawha
as specified in the plat 11316 poles to pointers. thence S 45 W 845
poles to two beech trees by branch of Little Kanawha corner to a
Survey made for Thomas Mathews of 2000 acres thence with his line
up said up said branch N 60 W 368 poles to a white oak corner to
said Survey and also corner to a Survey of 3098 acres made for Charles
Patterson, and continuing the same course with said Pattersons line 546 poles
to two sugar trees growing from one root about 20 poles from a branch of Little
Kanawha crossing a branch of the same at 320 poles. thence S 30 W 310 poles to
a beech in the forks of the left hand fork of the South fork of Poccotalico, about a half
a mile up said fork being said corner to said Pattersons Survey, and also corner to a
Survey of 5300 acres made for Samuel Hollingsworth. thence with his lines crossing
Waters as marked in the plat N 15 W 390 poles to a beech and lynn in the fork of a creek. N 35 W 630
poles to a beech by a branch. N 45 W 260 poles to a large poplar and chestnut oak. S 45 W 360 poles to a
white oak and poplar on the East side of a hill. S 35 W 660 poles to a sugar tree, and beech and large
Lynn with marked. S 45 W 1980 poles to a Lynn and sugar tree on the bank of a small branch
S 80 W 590 poles to a large Poplar. S 55 W 320 poles to a Poplar and maple on a head-branch of Mill Creek
S 898 460 poles to the Beginning - An allowance of 27460 acres is made in the calculation of area of
this plat for prior claims contained within boundary thereof

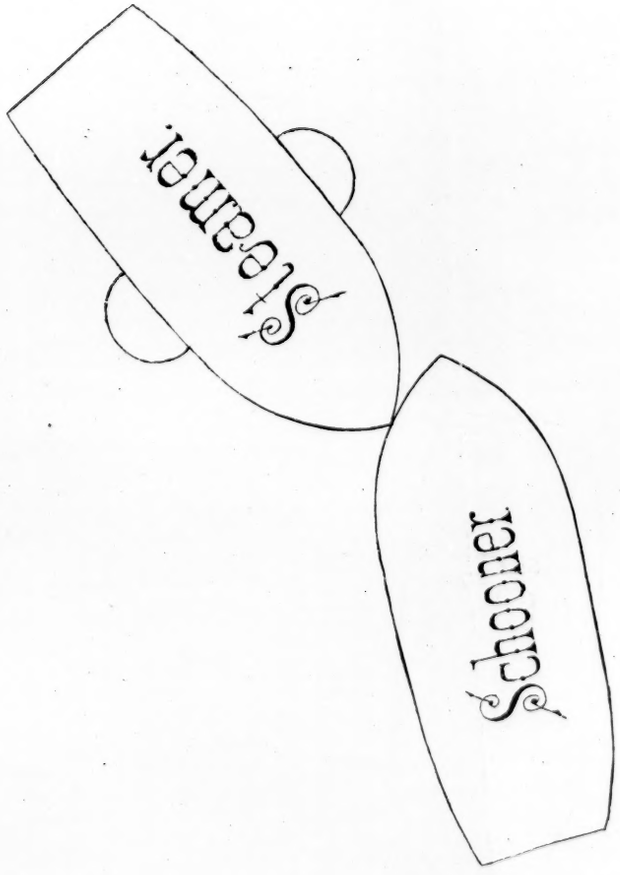
Dec 10th 1795

Andrew McClung } Sworn
Coleman McCulloch } Chainmen
John Donsheroe } Marker
Variation 2° East

{ Anselm Tupper Asst to
{ Reuben Slaughter S. K. C.

Copy from Record Book 1st pages 152. 153 & 154 Wm Tunnell S K C

No. 1.
WILLIAM H. BICKMORE.



No. 319

Clapp

No. 2.
SAMUEL L. CLAPP.

Struck the schooner on port bow.

No. 319 - [illegible]
page 107

WILLIAM H. BICKMORE,
No. 3.
March 10, 1875.
S. B.